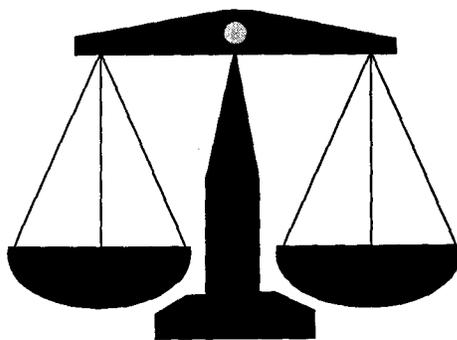


# **THE NORTH CAROLINA COURTS COMMISSION**

*Report to the 1998 Regular Session  
of the 1997 General Assembly*



**A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE FOR  
DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.**

**ROOMS 2126, 2226  
STATE LEGISLATIVE BUILDING  
RALEIGH, NORTH CAROLINA 27611  
TELEPHONE: (919) 733-7778**

**OR**

**ROOM 500  
LEGISLATIVE OFFICE BUILDING  
RALEIGH, NORTH CAROLINA 27603-5925  
TELEPHONE: (919) 733-9390**

TABLE OF CONTENTS

NORTH CAROLINA COURTS COMMISSION MEMBERSHIP ..... ii

LETTER FROM THE CHAIRMAN ..... 1

RECOMMENDATIONS ..... 3

APPENDICES

AUTHORIZING LEGISLATION..... A

LEGISLATIVE PROPOSAL I - A BILL TO BE ENTITLED AN ACT  
TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR  
GUBERNATORIAL NOMINATION OF JUSTICES OF THE SUPREME COURT AND JUDGES  
OF THE COURT OF APPEALS, LEGISLATIVE CONFIRMATION, AND RETENTION BY VOTE  
OF THE PEOPLE  
AND A BILL ANALYSIS ..... B

LEGISLATIVE PROPOSAL II- A BILL TO BE ENTITLED AN ACT  
TO RESTORE PROVISIONS THAT VICTIM AND WITNESS ASSISTANTS SHALL  
ONLY PROVIDE SERVICES FOR VICTIMS OF CRIME AND WITNESSES IN CRIMINAL CASES  
AND A BILL ANALYSIS ..... C

LEGISLATIVE PROPOSAL III- A BILL TO BE ENTITLED AN ACT  
TO AMEND THE SMALL CLAIMS PROCEDURE TO CLARIFY THAT THE  
DISTRICT COURT HAS AUTHORITY TO HEAR CERTAIN MOTIONS FOR RELIEF FROM  
MAGISTRATES JUDGMENTS  
AND A BILL ANALYSIS ..... D

LEGISLATIVE PROPOSAL IV- A BILL TO BE ENTITLED AN ACT  
TO PROVIDE THAT THE CHILD SUPPORT ENFORCEMENT AGENCY SHALL  
REPRESENT OBLIGEES IN IV-D UIFSA CASES AND TO APPROPRIATE FUNDS  
AND A BILL ANALYSIS ..... E

LEGISLATIVE PROPOSAL V- A BILL TO BE ENTITLED AN ACT  
TO PROVIDE THAT THERE IS NO INSURANCE PREMIUM SURCHARGE  
OR ASSESSMENT OF POINTS FOR A CONVICTION FOR SPEEDING FIFTEEN  
MILES PER HOUR OR LESS OVER THE SPEED LIMIT  
AND A BILL ANALYSIS ..... F

LEGISLATIVE PROPOSAL VI- A BILL TO BE ENTITLED AN ACT  
TO RECODIFY THE LAW CONCERNING HABITUAL FELONS AND VIOLENT  
HABITUAL FELONS TO PROVIDE THAT THE ISSUE OF WHETHER A DEFENDANT  
IS AN HABITUAL FELON OR VIOLENT HABITUAL FELON SHALL BE  
DETERMINED BY THE TRIAL JUDGE, AND TO MAKE OTHER CHANGES  
AND A BILL ANALYSIS ..... G

LEGISLATIVE PROPOSAL VII- A BILL TO BE ENTITLED AN ACT

TO ALLOW THE ENFORCEMENT OF AN ORDER FOR RESTITUTION  
IN A CRIMINAL CASE IN THE SAME MANNER AS A CIVIL JUDGMENT, TO  
CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION  
OF SUCH A JUDGMENT, AND TO CHANGE THE ORDER OR PRIORITY FOR  
DISBURSEMENT OF FUNDS IN A CRIMINAL CASE  
AND A BILL ANALYSIS..... H

LEGISLATIVE PROPOSAL VIII- A BILL TO BE ENTITLED AN ACT  
TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN DISTRICT  
AND SUPERIOR CIVIL COURTS AND TO MAKE CORRESPONDING CHANGES  
TO THE RULES OF CIVIL PROCEDURE AND NONBINDING ARBITRATION  
AND A BILL ANALYSIS..... I

LEGISLATIVE PROPOSAL IX- A BILL TO BE ENTITLED AN ACT  
TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE  
IN BOND FORFEITURE CASES  
AND A BILL ANALYSIS..... J

LEGISLATIVE PROPOSAL X- A BILL TO BE ENTITLED AN ACT  
TO ADD CLERKS OF COURT TO THE SENTENCING AND POLICY  
ADVISORY COMMISSION, THE CRIMINAL JUSTICE ADVISORY BOARD,  
AND THE GOVERNOR'S CRIME COMMISSION  
AND A BILL ANALYSIS..... K

LEGISLATIVE PROPOSAL XI- A BILL TO BE ENTITLED AN ACT  
TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-STATE  
WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND STATE EMPLOYEES  
AND A BILL ANALYSIS..... L

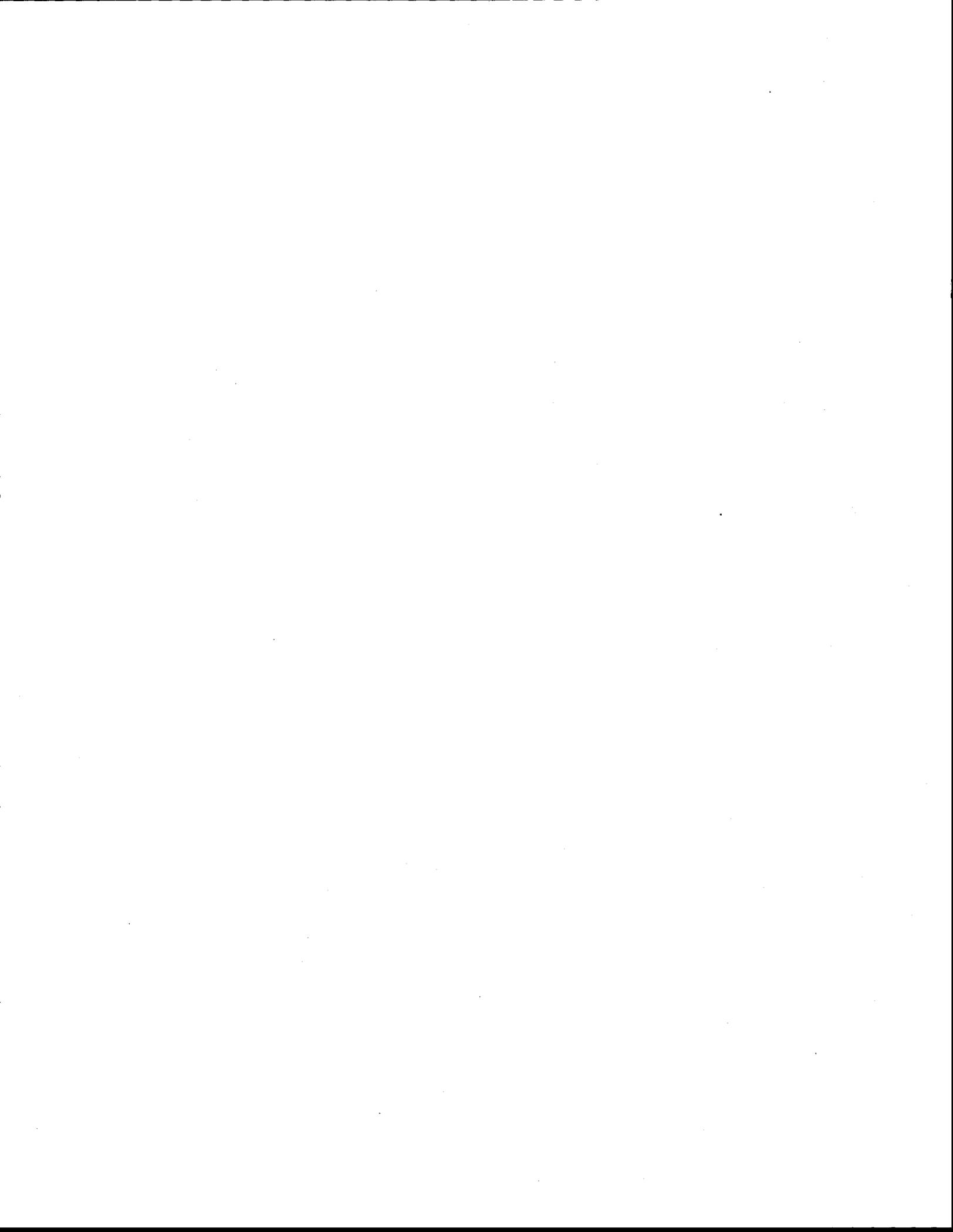
1998

**NORTH CAROLINA COURTS COMMISSION**

Representative Robert C. Hunter  
Chairman

Mr. Wade Barber, Jr.  
Senator Patrick J. Ballantine  
Mr. Dallas Cameron  
Mr. Robert H. Christy, Jr.  
Judge J. Carlton Cole  
Mr. Darren Cranfill  
Representative William Culpepper  
Mr. W. Douglas Parsons  
Judge William A. Christian  
Representative N. Leo Daughtry  
Mr. T.W. Ellis, Jr.  
Mr. David T. Flaherty  
Mr. Carl Fox  
Mr. Phillip Ginn  
Representative Bobby Ray Hall

Representative Edwin M. Hardy  
Mr. J. Carl Hayes  
Judge Robert H. Hobgood  
Judge Robert Johnston  
Ms. Judy Long  
Representative Paul R. McCrary  
Mr. Paul Michaels  
Representative Charles B. Neely, Jr.  
Senator Fountain Odom  
Senator Anthony Rand  
Ms. Ann Reed  
Dr. Traci Venise Reid  
Senator Allen Wellons  
Justice Willis P. Whichard  
Judge James A. Wynn



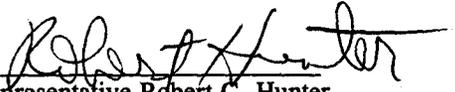
To the Members of the 1998 Regular Session of the 1997 General Assembly:

The North Carolina Courts Commission is pleased to present its recommendations to the 1998 Regular Session of the General Assembly. The Courts Commission was created by the General Assembly to study the structure, organization, jurisdiction, procedures, and personnel of the State's court system. The Commission is dedicated to improving the efficiency of our courts while, at the same time, preserving an equitable and fair system of justice for the State's citizens. Members on the Commission include judges of the Supreme Court and Court of Appeals, Superior and District Court judges, district attorneys, clerks of court, magistrates, representatives of the State Bar and Bar Association, practicing attorneys, and members of the Senate and House of Representatives. As recommended by the Commission in its 1997 Report, legislation authorizing the appointment of four non-attorney, public members was ratified during the 1997 Session. With the addition of these public members, the Commission received valuable insight into to the public's perception of our courts and our legal system.

Of particular concern to the Commission is the level of funding provided to the court system. Insufficient funding during the past decade coupled with the creation of new crimes and other punitive and remedial measures has resulted in a court system which is increasingly unable to meet the public's expectations. In this report, the Commission also strongly recommends the appointment of appellate court judges to alleviate the pressures associated with statewide partisan elections. Other recommendations in this report include such topics as the role of victim and witness assistants, representation in IV-D child support cases, insurance points for certain speeding offenses, and judicial determination of a defendant's habitual felon status. All of the recommendations in this report are designed to provide a court system which is better able to respond to the State's needs.

The Courts Commission is pleased to submit this report to you.

Respectfully submitted,

  
Representative Robert C. Hunter  
Chairman, North Carolina Courts Commission



## RECOMMENDATIONS OF THE COURTS COMMISSION

**RECOMMENDATION 1: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL NOMINATION OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS, LEGISLATIVE CONFIRMATION, AND RETENTION BY VOTE OF THE PEOPLE." (Appendix B)**

Election of judges is one of the issues in court administration that will not go away. It is an issue about which agreement is hard to achieve. The Commission has studied this issue for most of its existence, dating back to the 1960's, and it has at various times in its history made recommendations for improvements in the selection process. Most of those proposals have recommended the elimination of popular elections and replacing them with an appointment system. They have generally dealt with all the levels of court. This year the Commission recommends a simpler bill.

The recommended bill only deals with the appellate courts. Those races are the only statewide judicial races. They are the most visible, and the most likely to generate the kinds of negative campaigns that the majority of the Commission finds inconsistent with the idea of an independent and impartial appellate bench. Thus, the bill is limited to only the appellate judgeships. Trial judges, who are all elected in relatively small districts, would continue to be elected.

Under the recommendation, the Governor would fill vacancies in appellate judgeships by appointment. The person appointed would be subject to confirmation by the General Assembly before being eligible to serve. A person appointed and confirmed would then serve a short period (from one to three years) and would then have to receive approval from a majority in a retention election to continue to serve in office.

If a sitting judge fails to achieve a majority in a retention election, a vacancy is created at the end of that judge's term. In that case, the Governor must appoint a member of the same political party as the judge who failed in the retention election.

This recommendation would avoid the problems associated with partisan statewide elections and, at the same time, retain the people's right to participate in the process in the retention election. It strikes the balance between accountability to the people and the judge's need to be able to act independently, and would be an improvement on the existing system.

**RECOMMENDATION 2: The Commission recommends that the 1998 Regular Session of the General Assembly provide adequate funding for the Judicial Branch of Government.**

The Commission believes that the level of funding provided to the court system has been insufficient to enable it to keep pace with the caseload and other demands faced by the courts. As part of its deliberations, the Commission heard from Chief Justice Mitchell and from Administrative Office of the Courts Director Dallas Cameron and his staff about the budgetary needs of the courts. The Commission's members' experiences in the courts corroborated the findings of those officials—the court system needs a substantial infusion of resources to enable it to provide the services it is expected to deliver. The Chief Justice's blunt words at the Commission's December, 1997 meeting served as a challenge as the Commission investigated the issue:

" . . . simply put, all of the legislation passed in recent years to get tough with drunk drivers, to crack down on deadbeat parents, to address the problem of domestic violence, to provide expanded rights for victims of crime and to deal with many other social issues is just one more string of hollow political promises and posturing. No action really can be taken unless the needs of the judicial branch or personnel and technology are met. I am not prepared to join any group or individual in pretending otherwise."

Adequate funding of the courts is essential if the state is to have a court system that meets the needs of its citizens and provides justice on a timely and effective basis.

The Commission recommends that the budget requests of the Administrative Office of the Courts be granted, to the extent that resources are available. The process used to develop the budget is sound and it is based on demonstrated needs

of the various components of the court system. It is a reasonable request. The Commission recognizes the competing demands for resources inherent in the appropriations process, but it knows of no function of government that is more basic to a civilized society than its justice system.

**RECOMENDATION 3: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO RESTORE PROVISIONS THAT VICTIM AND WITNESS ASSISTANTS SHALL ONLY PROVIDE SERVICES FOR VICTIMS OF CRIME AND WITNESSES IN CRIMINAL CASES." (Appendix C)**

During the 1997 Session of the General Assembly, Section 18.7 of Senate Bill 352 (the Budget Bill) provided that victim and witness assistants would provide administrative and legal support to the district attorney's office, in addition to the assistants' duties to assure fair treatment for victims and witnesses. In fact, victim and witness assistants were renamed "assistants for administrative and victim and witness services." Prior to this change, victim and witness assistants provided services solely for crime victims and witnesses in criminal cases. Ms. Catherine Smith, Executive Director, North Carolina Victim Assistance Network (NC-VAN), presented a resolution adopted by VAN requesting the General Assembly to "re-establish victim and witness assistants as dedicated individuals providing victim services in North Carolina." As noted in the resolution, not having dedicated positions for victim and witness services will cause further confusion for victims of violent crime. The service provided by victim and witness assistants is invaluable to victims frustrated by an unfamiliar and often intimidating legal process. The Commission recognizes the tremendous workload of district attorneys across this State. However, the Commission agrees that victim and witness assistants should not be asked to serve as administrative staff to district attorneys. These additional administrative duties would only weaken the ability of victim and witness assistants to provide necessary services to the State's crime victims.

**RECOMMENDATION 4: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO AMEND THE SMALL CLAIMS PROCEDURE TO CLARIFY THAT THE DISTRICT COURT HAS AUTHORITY TO HEAR CERTAIN MOTIONS FOR RELIEF FROM MAGISTRATES' JUDGMENTS." (Appendix D)**

Rule 60(b)(1) of the Rules of Civil Procedure authorizes the court to set aside a judgment or order for mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(2) through (6) authorizes the court to set aside a judgment or order for newly discovered evidence, fraud, a void judgment, a satisfied or discharged judgment, or for any other reason justifying relief. G.S. 7A-228 provides that "with the consent of the chief district court judge, a magistrate may set aside the order or judgment [of another magistrate] for mistake or excusable neglect pursuant to Rule 60(b)(1) and order a new trial before a magistrate." The common understanding was that district court judges could also hear a motion under Rule 60(b)(1) whether or not the chief judge had authorized magistrates to hear these motions. However, in Stephens v. Koenig, 119 N.C. App. 323 (1995), the North Carolina Court of Appeals construed the statute as excluding district court judges from hearing any Rule 60(b) motions to set aside a magistrate's judgment. Since, under G.S. 7A-228, a magistrate may only be authorized to hear a motion pursuant to subsection (1) of Rule 60(b), this ruling effectively leaves no judicial official who is authorized to hear a motion pursuant to Rule 60(b)(2) through (6) to set aside a magistrate's judgment. For a judgment that is void under Rule 60(b)(2) through (6), the defendant's sole remedy would be to appeal. If the ten day period to appeal a magistrate's judgment has expired, the defendant may be left without recourse. For example, a defendant who was never properly served in a small claims case and, therefore, never aware of the magistrate's judgment may be unable to challenge the judgment after the expiration of ten days.

The Commission recommends that, in light of the decision by the Court of Appeals, G.S. 7A-228 be clarified to authorize district court judges to hear any Rule 60(b) motion, whether or not magistrates are authorized to hear a motion under Rule 60(b)(1).

The following recommendations were included in the Commission's report to the 1997 Session of the General Assembly, but were not ratified. The Commission recommends the following legislation for ratification by the 1998 Regular Session of the General Assembly.

**RECOMMENDATION 5: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL ENTITLED AN ACT TO PROVIDE THAT THE CHILD SUPPORT ENFORCEMENT AGENCY SHALL REPRESENT OBLIGEES IN IV-D UIFSA CASES AND TO APPROPRIATE FUNDS." (Appendix E)**

Under the Uniform Interstate Family Support Act (UIFSA), district attorneys have the responsibility of representing obligees in interstate child support cases, unless other arrangements are made. In 43 of the state's counties, district attorneys provide the legal representation to obligees in all UIFSA cases. However, in the other 57 counties, attorneys employed by, or under contract with, local departments of social services, handle the legal duties in UIFSA cases that are IV-D. Representatives from both the Conference of District Attorneys and from the Child Support Enforcement Section of the state Department of Human Resources told the Commission that child support attorneys are able to handle IV-D UIFSA cases more efficiently and effectively than district attorneys, and they agreed that local child support enforcement agencies, rather than district attorneys, should handle these cases.

The Commission finds that the law should be amended to require local child support enforcement agencies, rather than district attorneys, to represent the obligees in IV-D UIFSA cases. The Commission believes that because these proceedings are civil, rather than criminal, in nature, and because local child support enforcement offices have better access than district attorneys to resources that allow them to collect child support payments, the responsibility of legal representation should be on the local child support enforcement agency. The Commission also finds that money must be appropriated for the state share of handling these cases, and that all 100 counties should be reimbursed for their local share.

**RECOMMENDATION 6: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THERE IS NO INSURANCE PREMIUM SURCHARGE OR ASSESSMENT OF POINTS FOR A CONVICTION FOR SPEEDING FIFTEEN MILES PER HOUR OR LESS OVER THE SPEED LIMIT. " (Appendix F)**

Our criminal justice system bears an ever increasing number of criminal cases each year. As noted in the report of the Commission on the Future of Justice and the Courts in North Carolina, approximately 2 million criminal cases were filed in 1995-96 of which the vast majority were misdemeanors or infractions. These cases place an unrealistic burden on our courts and often cause our justice system to appear inefficient and inaccessible to the State's citizens. To alleviate the burden these cases place on our justice system, the Courts Commission recommends that there be no insurance premium surcharge or assessment of points for a conviction for speeding fifteen miles per hour or less over the speed limit. This change would eliminate insurance points and surcharges for a large number of infractions. As noted by more than one Commission member, this change could dramatically reduce the number of traffic cases in district court.

**RECOMMENDATION 7: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO RECODIFY THE LAW CONCERNING HABITUAL FELONS AND VIOLENT HABITUAL FELONS TO PROVIDE THAT THE ISSUE OF WHETHER A DEFENDANT IS AN HABITUAL FELON OR A VIOLENT HABITUAL FELON SHALL BE DETERMINED BY THE TRIAL JUDGE, AND TO MAKE OTHER CHANGES." (Appendix G)**

Under current law, if a defendant is found guilty of a felony, the jury must make a separate determination as to whether the defendant is an habitual felon. Furthermore, the determination of habitual felon status must proceed as if the issue were a separate principal charge. This creates a cumbersome process for what is essentially a simple determination based upon the defendant's record. As a sentencing issue, and not an element of the crime, the determination of habitual felon status need not be determined by the jury. Rather, a judge may make the determination and can do so in a less time-consuming manner. To accomplish this result, the Commission originally recommended House Bill 222 to the 1997

Session. This bill, which passed the House of Representatives and is currently in the Senate Judiciary Committee, authorizes the trial judge in a felony case to determine if the felon is an habitual felon. The Commission again recommends House Bill 222, as passed by the House of Representatives during the 1997 Session. This legislation is also included as Appendix G of this report.

**RECOMMENDATION 8: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ALLOW THE ENFORCEMENT OF AN ORDER FOR RESTITUTION IN A CRIMINAL CASE IN THE SAME MANNER AS A CIVIL JUDGMENT, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF SUCH A JUDGMENT, AND TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN A CRIMINAL CASE." (Appendix H)**

In both of its reports to the 1995 General Assembly, the Courts Commission included legislation that would provide for the enforcement of restitution orders as civil judgments. The Commission again recommends this legislation to the General Assembly. Providing for the enforcement of these orders as civil judgments will create a mechanism for collecting restitution beyond the period of probation, parole or post-release supervision. To ensure that victims have a greater opportunity to collect the damages owed to them, the Commission further recommends that, of the monies paid to the court by a defendant, restitution to the victim be disbursed first, before other costs, fines, and attorneys fees. Also, to streamline execution of these judgments, the Commission recommends that the General Assembly create an exception to the statutory exemptions for execution of restitution orders.

The Commission recognizes that the General Assembly is currently considering legislation which would implement the victims' rights amendment to the State Constitution. The victims' rights amendment was passed by the voters of our State on November 5, 1996 and provides for the legislature to design basic protections and services for crime victims. Included in this implementing legislation for the victims' rights amendment are provisions similar to this recommendation. The Commission enthusiastically endorses the victims rights implementing legislation. However, if this implementing legislation is not ratified during the 1998 Regular Session, the Commission submits this recommendation and the accompanying legislation contained in Appendix G of this report as an important first step in victims rights.

**RECOMMENDATION 9: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN DISTRICT AND SUPERIOR CIVIL COURTS AND TO MAKE CORRESPONDING CHANGES TO THE RULES OF CIVIL PROCEDURE AND NONBINDING ARBITRATION." (Appendix I)**

There is a need to increase the amount in controversy for civil actions in district court. It has not been increased since 1982. During that same period of time, the General Assembly has increased the amount in controversy in small claims cases three times—from \$1,000 to \$3,000. The Commission recommends that district court be the proper division for civil cases of \$25,000 or less and concomitantly recommends that the statewide court-ordered nonbinding arbitration program be used in cases where claims do not exceed \$25,000.

**RECOMMENDATION 10: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE IN BOND FORFEITURE CASES." (Appendix J)**

Prior to the changes enacted by the General Assembly during the 1995 Regular Session, an order of forfeiture of bail was served first by the sheriff, and, if the sheriff could not complete service, was mailed by the clerk by regular mail. During the 1995 Regular Session, the General Assembly removed the requirement that the sheriff first attempt service of the order and provided that the clerk serve the order by certified mail. As explained to the Commission by the Clerks of Court Association, this requirement of certified mail notice results in increased costs for service and creates additional work for the clerks. Furthermore, notice by certified mail serves little or no purpose since, in most cases, the defendant cannot be located. As noted by the clerks, serving an order by certified mail to a defendant a bondsman cannot find is often a

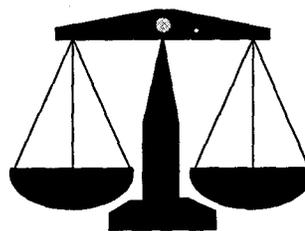
waste of time. The Commission believes that the certified mail requirement should be eliminated and replaced by service by first class mail. To accomplish this result, the Commission recommends House Bill 354 to the 1998 Regular Session. This bill was originally recommended by the Commission in 1997 and passed the House of Representatives during the 1997 Session. This legislation is also included in Appendix J of this report.

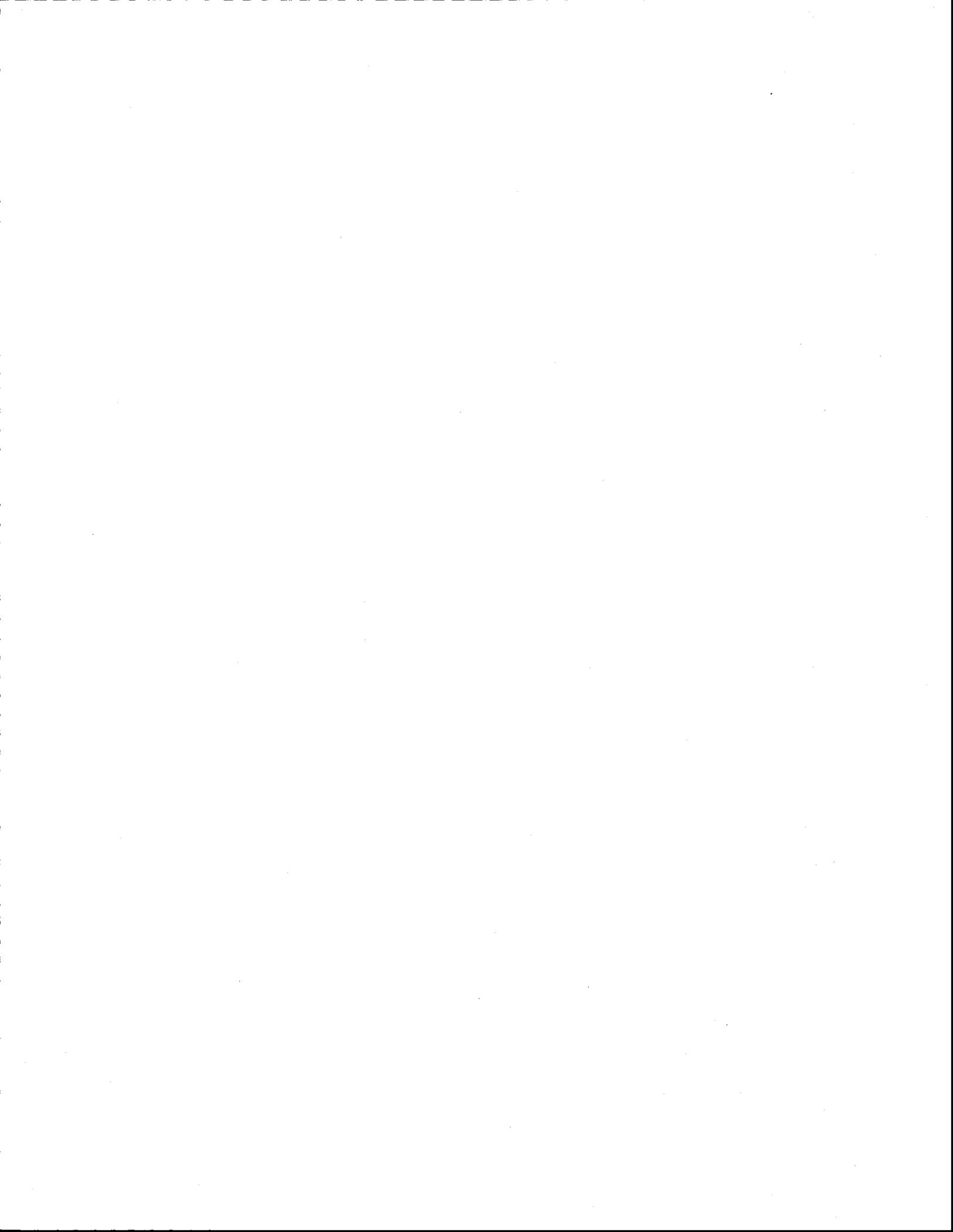
**RECOMMENDATION 11: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ADD CLERKS OF COURT TO THE SENTENCING AND POLICY ADVISORY COMMISSION, THE CRIMINAL JUSTICE ADVISORY BOARD, AND THE GOVERNOR'S CRIME COMMISSION." (Appendix K)**

Membership on the Sentencing and Policy Advisory Commission, the Criminal Justice Advisory Board, and the Governor's Crime Commission includes representatives of various segments of law enforcement and the courts. Through their court responsibilities, the clerks are consistently involved with criminal issues and should be represented on these Commissions. The Courts Commission recommends that the authorizing legislation of these Commissions be amended to provide for membership by a representative of the clerks of court.

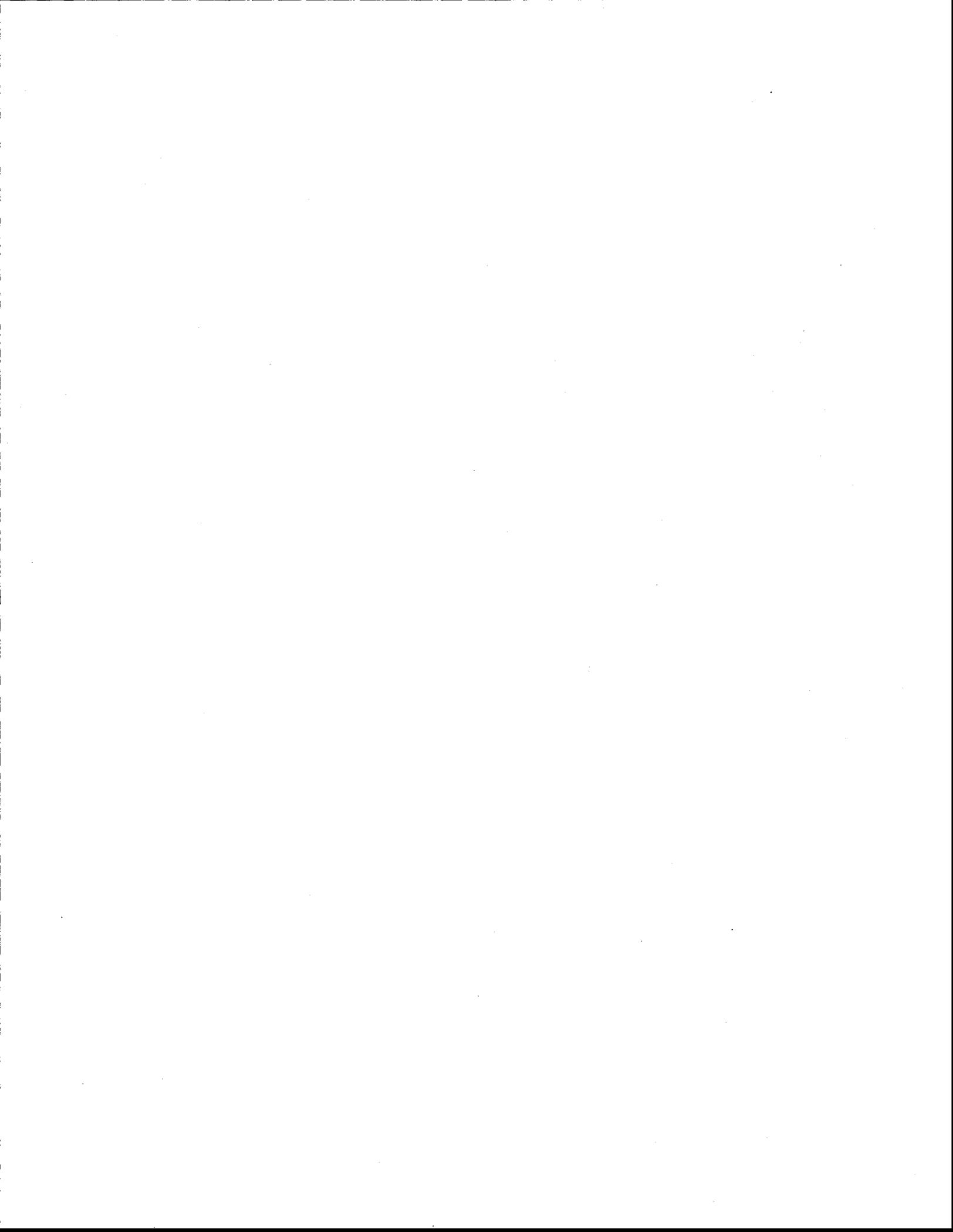
**RECOMMENDATION 12: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND STATE EMPLOYEES." (Appendix L)**

Before 1971, G.S. 7A-314 made no distinction in mileage reimbursement between in-state and out-of-state witnesses, as all witnesses were reimbursed at the same rate as State employees. Since then the mileage rate has been increased for State employees, and by extension, in-state witnesses. By inadvertence, the out-of-state witness rate had not increased accordingly. The Commission recommends that the General Assembly enact legislation to return the rate of reimbursement for out-of-state witnesses who testify in North Carolina cases to a rate equivalent to that paid to in-state witnesses and State employees.





## **APPENDIX A**



**CHAPTER 7A**  
**ARTICLE 40A.**  
**North Carolina Courts Commission.**

**§ 7A-506. Creation; members; terms; qualifications; vacancies.**

- (a) The North Carolina Courts Commission is created. Effective July 1, 1993, it shall consist of 28 members, seven to be appointed by the Governor, seven to be appointed by the Speaker of the House of Representatives, seven to be appointed by the President Pro Tempore of the Senate, and seven to be appointed by the Chief Justice of the Supreme Court.
- (b) Of the appointees of the Chief Justice of the Supreme Court, one shall be a Justice of the Supreme Court, one shall be a Judge of the Court of Appeals, two shall be judges of superior court, two shall be district court judges, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.
- (c) Of the seven appointees of the Governor, one shall be a district attorney, one shall be a practicing attorney, one shall be a clerk of superior court, at least three shall be members of the General Assembly, at least two shall not be attorneys, and of the nonattorneys, one shall be a public member who is not an officer or employee of the Judicial Department.
- (d) Of the seven appointees of the Speaker of the House, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, at least two shall not be attorneys, and of the non-attorneys, one shall be a public member who is not an officer or employee of the Judicial Department.
- (e) Of the seven appointees of the President Pro Tempore of the Senate, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, at least one shall be a magistrate, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.
- (f) Of the initial appointments of each appointing authority, three shall be appointed for four-year terms to begin July 1, 1993, and three shall be appointed for two-year terms to begin July 1, 1993. The two public members appointed by the Governor and the Speaker of the House of Representatives shall be appointed for four-year terms to begin July 1, 1997. The two public members appointed by the Chief Justice and the President Pro Tempore of the Senate shall be appointed for two-year terms to begin July 1, 1997. Successors shall be appointed for four-year terms.
- (g) A vacancy in membership shall be filled for the remainder of the unexpired term by the appointing authority who made the original appointment. A member whose term expires may be reappointed.

**§ 7A-507. Ex officio members.**

The following additional members shall serve ex officio: the Administrative Officer of the Courts; a representative of the N. C. State Bar appointed by the Council thereof; and a representative of the N. C. Bar Association appointed by the Board of Governors thereof. The Administrative Officer of the Courts has no vote.

**§ 7A-508. Duties.**

It shall be the duty of the Commission to make continuing studies of the structure, organization, jurisdiction, procedures and personnel of the Judicial Department and of the General Court of Justice and to make recommendations to the General Assembly for such changes therein as will facilitate the administration of justice.

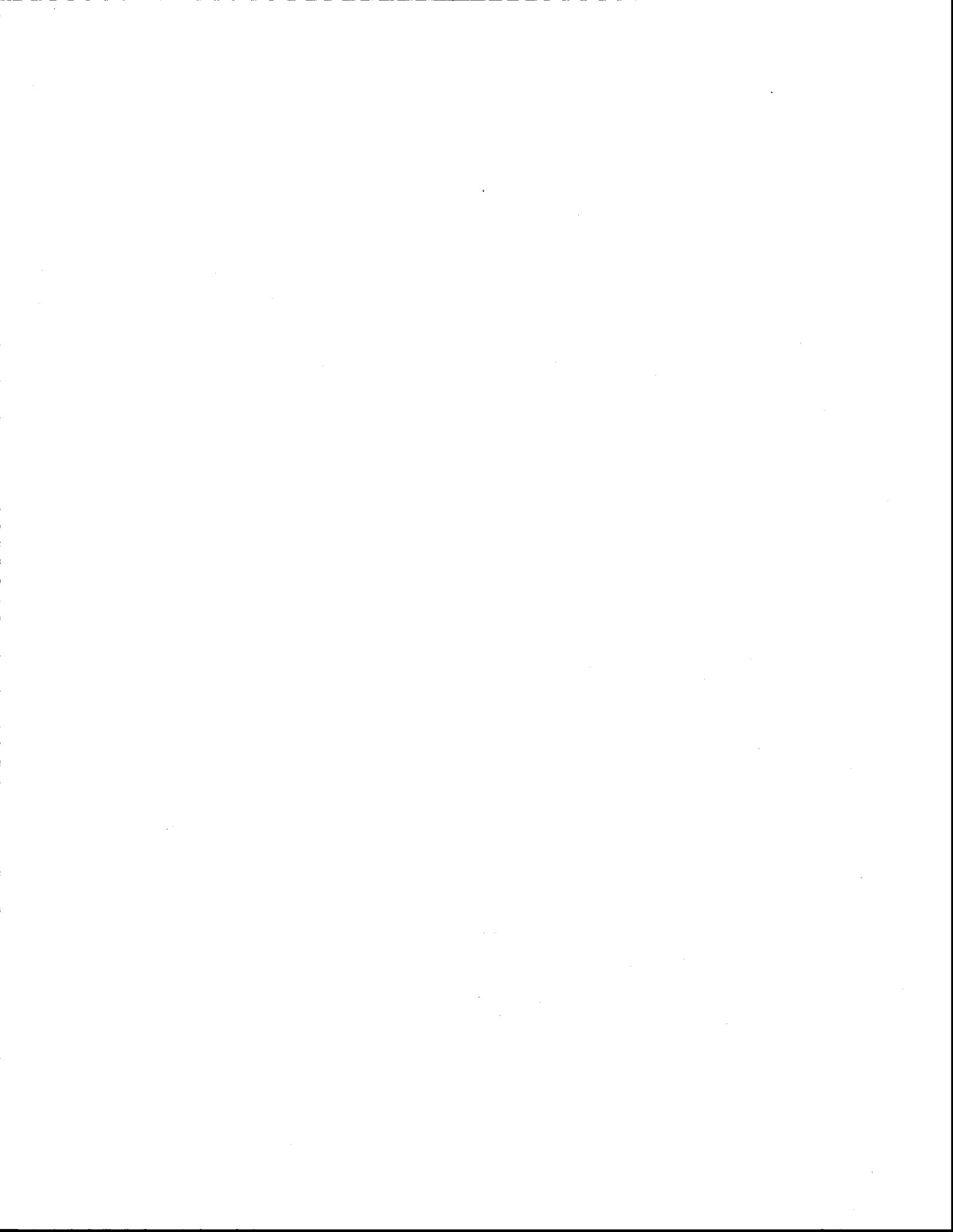
**§ 7A-509. Chair; meetings; compensation of members.**

The Governor, after consultation with the Chief Justice of the Supreme Court, shall appoint a chair from the legislative members of the Commission. The term of the chair is two years, and the chair may be reappointed. The Commission shall meet at such times and places as the chair shall designate. The facilities of the State Legislative Building shall be available to the Commission, subject to approval of the Legislative Services Commission. The members of the Commission shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions generally.

**§ 7A-510. Supporting services.**

The Commission is authorized to contract for such professional and clerical services as are necessary in the proper performance of its duties.

**APPENDIX B**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S/H

D

98-RGZ-002(4.23)  
THIS IS A DRAFT 13-MAY-98 11:06:55

Short Title: Judicial Appt./Voter Retention

(Public)

---

Sponsors:

---

Referred to:

---

May 1, 1998

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR  
3 GUBERNATORIAL NOMINATION OF JUSTICES OF THE SUPREME COURT AND  
4 JUDGES OF THE COURT OF APPEALS, LEGISLATIVE CONFIRMATION, AND  
5 RETENTION BY VOTE OF THE PEOPLE.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. Section 16 of Article IV of the North  
8 Carolina Constitution reads as rewritten:  
9 "Sec. 16. ~~Terms of office and election of Justices of the~~  
10 ~~Supreme Court, Judges of the Court of Appeals, and Judges of the~~  
11 ~~Superior Court. Selection and tenure of Justices of the Supreme~~  
12 ~~Court and Judges of the Court of Appeals; election of Judges of~~  
13 ~~the Superior Court.~~  
14 ~~Justices of the Supreme Court, Judges of the Court of Appeals,~~  
15 ~~and regular (1) Judges of the Superior court shall be elected by~~  
16 ~~the qualified voters and shall hold office for terms of eight~~  
17 ~~years and until their successors are elected and qualified.~~  
18 ~~Justices of the Supreme Court and Judges of the Court of Appeals~~  
19 ~~shall be elected by the qualified voters of the State. Regular~~  
20 ~~Judges of the Superior Court may shall be elected by the~~  
21 ~~qualified voters of the State or by the voters of their~~  
22 ~~respective districts, as the General Assembly may prescribe.~~  
23 districts.

1 (2) General principles. Justices and judges of the Appellate  
2 Division should be selected for and continue to hold office  
3 solely upon the basis of personal and professional fitness to  
4 administer right and justice wisely, according to law, and  
5 without favor, denial, or delay, to all persons who come into the  
6 courts. While their continuation in office should be  
7 periodically subject to approval by the people, both their  
8 initial selection and continuation in office should be free, so  
9 far as may be, from the influences and necessities of partisan  
10 political activity.

11 (3) Nomination, confirmation, appointment retention election,  
12 and terms of justices and judges. On and after January 1, 1999,  
13 when a vacancy occurs in the office of Chief Justice, Associate  
14 Justice, or Judge of the Appellate Division, the Governor shall  
15 nominate a person to fill the vacancy. Prior to appointment,  
16 such nominations by the Governor shall be subject to confirmation  
17 of the General Assembly by three-fifths of the members of each  
18 house present and voting prior to appointment. For the purposes  
19 of this section, creation of a new judgeship within the Appellate  
20 Division creates a vacancy.

21 Each house of the General Assembly shall vote on confirmation  
22 within 60 calendar days of the date of nomination, except that no  
23 day shall be included within that calculation if it is:

24 (a) Between sine die adjournment of one regular session  
25 and convening of the next regular session; or  
26 (b) During any period when the General Assembly has  
27 adjourned a regular session for more than 30 days  
28 jointly as provided under Section 20 of Article II  
29 of this Constitution.

30 If a nomination is made during either of the periods listed in  
31 subdivision (a) or (b) of this subsection, the Governor may  
32 convene the General Assembly in extra session for the purpose of  
33 considering confirmation of the nomination. No action of that  
34 extra session shall be valid after the second calendar day of  
35 that session, and that extra session may not consider any matters  
36 other than rules for the extra session, confirmation of the  
37 nomination, and adjournment sine die. The nomination may not be  
38 confirmed in any extra session other than one called under this  
39 subsection.

40 The term of office by appointment as Chief Justice, Associate  
41 Justice, or Judge of the Appellate Division extends through June  
42 30 after the next statewide election for members of the General  
43 Assembly that is held more than 18 months after the nomination is  
44 confirmed. At that election, a person holding by appointment the

1 office of Chief Justice, Associate Justice, or Judge of the  
2 Appellate Division who desires to continue in office shall be  
3 subject to approval by nonpartisan ballot, by a majority of the  
4 votes cast on the issue of the Justice's or Judge's retention. A  
5 Chief Justice, Associate Justice, or Judge of the Appellate  
6 Division then approved for retention serves a regular term.

7 The regular term of office of the Chief Justice, Associate  
8 Justices, and Judges of the Appellate Division is eight years and  
9 expires on June 30.

10 At the last statewide election for members of the General  
11 Assembly held before the expiration of a regular term of office,  
12 a Chief Justice, Associate Justice, or Judge of the Appellate  
13 Division who desires to continue in office shall be subject to  
14 approval by nonpartisan ballot, by a majority of the votes cast  
15 on the issue of the Justice's or Judge's retention.

16 If the voters fail to approve the retention in office of a  
17 Chief Justice, Associate Justice, or Judge of the Appellate  
18 Division serving an appointed or regular term, the office shall  
19 become vacant at the end of the term of office, and it shall be  
20 filled by nomination, confirmation, and appointment as prescribed  
21 in this section. In such case, the Governor may only nominate a  
22 person of the same political affiliation as the justice or judge  
23 who has not been retained in office. For the purpose of this  
24 section, the political affiliation of a nominee for justice or  
25 judge is determined as of 24 months preceding the date of the  
26 vacancy for which the nomination is made.

27 Voting in a retention election on the Chief Justice, Associate  
28 Justices, and Judges of the Appellate Division shall be the  
29 qualified voters of the whole State.

30 (4) Transition provisions. The term of office of a person who  
31 has been elected before January 1, 1999, to the office of Chief  
32 Justice, Associate Justice, or Judge of the Appellate Division  
33 for a term which extends beyond January 1, 1999, and who is in  
34 office on January 1, 1999, is extended through June 30 of the  
35 year following the eighth year after the date any such justice or  
36 judge was last elected to the office. If the person so elected  
37 continues to serve for the remainder of the term, that person may  
38 stand for retention in the office for a succeeding regular term  
39 as provided in this section. If the person continues to serve  
40 for the remainder of the term but does not stand for retention  
41 election, a vacancy is created in the office upon expiration of  
42 the term, and this vacancy shall be filled by nomination,  
43 confirmation, and appointment as provided in this section.

1 The term of office of a person who has been appointed before  
2 January 1, 1999, to the office of Chief Justice, Associate  
3 Justice, or Judge of the Appellate Division for a term which  
4 extends beyond January 1, 1999, and who is in office on January  
5 1, 1999, shall end on June 30, 2001. If the person so appointed  
6 continues to serve for the remainder of the term, that person may  
7 stand for retention in the office for a regular term as provided  
8 by this section at the statewide election for members of the  
9 General Assembly held in 2000.

10 Upon the death, resignation, removal, or retirement of any  
11 incumbent justice or judge on or after January 1, 1999, and  
12 before the expiration of his term of office, the resulting  
13 vacancy shall be filled by nomination, confirmation, and  
14 appointment as provided in this section.

15 Vacancies in judicial offices in the Appellate Division  
16 occurring before January 1, 1999, and not filled by that date,  
17 shall be filled by nomination, confirmation, and appointment as  
18 provided in this section.

19 From the date any incumbent described in this subsection is  
20 continued in office by retention vote for a term next succeeding  
21 the term in progress on January 1, 1999, or is succeeded in  
22 office by another person, the office is held subject to the  
23 provisions of this section.

24 (5) The General Assembly may implement this section by general  
25 law."

26 Sec. 2. The amendment set out in Section 1 of this act  
27 shall be submitted to the qualified voters of the State at the  
28 general election in November 1998, which election shall be  
29 conducted under the laws then governing elections in the State.  
30 Ballots, voting systems, or both may be used in accordance with  
31 Chapter 163 of the General Statutes.

32 "[ ] FOR [ ] AGAINST

33 Constitutional amendment to replace the present practice  
34 of selecting justices and judges of the Appellate Division by  
35 gubernatorial appointment, followed by partisan elections, with a  
36 method by which justices and judges of the Appellate Division  
37 will be nominated by the Governor, confirmed by the General  
38 Assembly, and then serve for limited terms after which the  
39 question of the justice's or judge's retention in office is  
40 regularly submitted for approval or disapproval by nonpartisan  
41 vote of the people at general elections, and to provide for  
42 election of superior court judges in their districts."

43 Sec. 3. If a majority of votes cast on the question are  
44 in favor of the amendment set out in Section 1 of this act, the

1 State Board of Elections shall certify the amendment to the  
2 Secretary of State. The amendment becomes effective upon this  
3 certification. The Secretary of State shall enroll the amendment  
4 so certified among the permanent records of that office.

5 Sec. 3.1. Chapter 7A of the General Statutes is amended  
6 by adding a new Article to read:

7 "ARTICLE 1A.

8 "Appointment and Confirmation of Justices and Judges,  
9 Retention Elections.

10 "§ 7A-4.1. Nomination of justices and judges by Governor and  
11 confirmation by General Assembly.

12 (a) The office of Chief Justice and Justice of the Supreme  
13 Court and Judge of the Court of Appeals are filled by nomination  
14 by the Governor subject to confirmation by the General Assembly  
15 in accordance with Section 16 of Article IV of the Constitution.

16 (b) Nominees are subject to confirmation as provided in this  
17 subsection. A nominee is confirmed by passage of a joint  
18 resolution of the General Assembly. The Governor may withdraw a  
19 nomination at any time.

20 "§ 7A-4.2. Confirmation procedures.

21 (a) A legislative committee to which the issue of confirmation  
22 is referred may conduct an investigation of the nominee. The  
23 investigation may include an evaluation of the nominee's ethical  
24 conduct, the nominee's knowledge of and application of the law,  
25 the nominee's management of the courts over which he has  
26 presided, the nominee's work habits, the nominee's health, and  
27 the nominee's judicial demeanor. The nominee or judge shall be  
28 given an opportunity to present to the committee any information  
29 that the nominee determines to be appropriate.

30 (b) The committee shall be allowed to inspect the files of the  
31 Judicial Standards Commission by request of the chairman of the  
32 committee. Notwithstanding the provisions of G.S. 7A-377, the  
33 files of the Judicial Standards Commission shall be made  
34 available to the committee. Testimony and other evidence  
35 presented to the committee is privileged in any action for  
36 defamation.

37 "§ 7A-4.3. Governor to issue commissions to justices and judges.

38 Every person duly nominated by the Governor as Chief Justice of  
39 the Supreme Court, Associate Justice of the Supreme Court, or  
40 Judge of the Court of Appeals and duly confirmed by the General  
41 Assembly shall be appointed by the Governor and shall procure  
42 from the Governor a commission attesting that fact, which the  
43 Governor shall issue upon receipt of a certification by the  
44 Secretary of State of the joint resolution of confirmation.

1 When a judge is retained in office by vote of the people, the  
2 Governor shall issue a commission attesting that fact, which the  
3 Governor shall issue upon receipt of a certification by the  
4 Secretary of State of the results of the election.

5 "§ 7A-4.4. No elections in 1999.

6 No partisan election as previously provided by law for Chief  
7 Justice or Associate Justice of the Supreme Court, or Judge of  
8 the Court of Appeals, shall be held in 1999 or thereafter.

9 "§ 7A-4.5. Retention elections.

10 (a) As provided by Section 16 of Article IV of the Constitution  
11 of North Carolina, a Chief Justice or Associate Justice of the  
12 Supreme Court or Judge of the Court of Appeals desiring to  
13 continue in office shall be subject to approval by nonpartisan  
14 ballot, by a majority of votes cast on the issue of the justice's  
15 or judge's retention.

16 (b) A person subject to subsection (a) of this section shall  
17 indicate the desire to continue in office by filing a notice to  
18 that effect with the State Board of Elections no later than 12:00  
19 noon on the first business day of July in the year of the  
20 election. The notice shall be on a form approved by the State  
21 Board of Elections. Notice can be withdrawn at any time prior to  
22 the deadline for filing notice under this subsection.

23 (c) Retention elections shall be conducted and canvassed in  
24 accordance with rules of the State Board of Elections in the same  
25 general manner as general elections under Chapter 163 of the  
26 General Statutes, except that the retention election is  
27 nonpartisan. The form of the ballot shall be determined by the  
28 State Board of Elections.

29 (d) Retention elections shall be placed at the top of the  
30 ballot above all other elections or matters for decision, whether  
31 partisan, nonpartisan, or otherwise.

32 (e) If a person who has filed a notice calling a retention  
33 election dies or is removed from office prior to the time that  
34 the ballots are printed, the retention election is cancelled. If  
35 a person who has filed a notice calling a retention election dies  
36 or is removed from office after the ballots are printed, the  
37 State Board of Elections may cancel the election if it determines  
38 that the ballots can be reprinted without significant expense.  
39 If the ballots cannot be reprinted, then the results of the  
40 election shall be ineffective."

41 Sec. 3.2 G.S. 163-140(a) reads as rewritten:

42

- 1    "(a) Kinds of General Election Ballots; Right to Combine. --  
2 For purposes of general elections, there shall be seven kinds of  
3 official ballots entitled:  
4           (1) Ballot for presidential electors  
5           (2) Ballot for United States Senator  
6           (3) Ballot for member of the United States House of  
7           Representatives  
8           (4) State ballot  
9           (5) County ballot  
10          (6) Repealed by Session Laws 1973, c. 793, s. 56  
11          (7) Ballot for constitutional amendments and other  
12          propositions submitted to the people  
13          (8) Judicial ballot for superior court.

14 Use of official ballots shall be limited to the purposes  
15 indicated by their titles. The printing on all ballots shall be  
16 plain and legible but, unless large type is specified by this  
17 section, type larger than 10-point shall not be used in printing  
18 ballots. All general election ballots shall be prepared in such a  
19 way as to leave sufficient blank space beneath each name printed  
20 thereon in which a voter may conveniently write the name of any  
21 person for whom he may desire to vote.

22 Unless prohibited by this section, the board of elections,  
23 State or county, charged by law with printing ballots may, in its  
24 discretion, combine any two or more official ballots. Whenever  
25 two or more ballots are combined, the voting instructions for the  
26 State ballot set out in subsection (b)(4) of this section shall  
27 be used, except that if the two ballots being combined do not  
28 contain a multi-seat race, then the second sentence of  
29 instruction b. shall not appear on the ballot.

30 Contests in the general election for seats in the State House  
31 of Representatives and State Senate shall be on ballots that are  
32 separate from ballots containing non-legislative contests, except  
33 where the voting system used makes separation of ballots  
34 impractical. State House and State Senate contests shall be on  
35 the same ballot, unless one is a single-seat contest and the  
36 other a multi-seat contest.

37 ~~All candidates for the Appellate Division shall appear on the~~  
38 ~~same ballot.~~

39 Sec. 3.3 For purpose of Section 1 of this act, terms of  
40 justices and judges covered by Section 2 of Chapter 98 of the  
41 1995 Session Laws are as provided by that act.

42 Sec. 3.4. G.S. 7A-10(a) reads as rewritten:

43 "(a) The Supreme Court shall consist of a Chief Justice and  
44 six associate justices, ~~elected by the qualified voters of the~~

1 ~~State for terms of eight years selected as provided by Article 1A~~  
2 ~~of this Chapter.~~ Before entering upon the duties of his office,  
3 each justice shall take an oath of office. Four justices shall  
4 constitute a quorum for the transaction of the business of the  
5 court. Sessions of the court shall be held in the city of  
6 Raleigh, and scheduled by rule of court so as to discharge  
7 expeditiously the court's business."

8           Sec. 3.5. G.S. 7A-16 reads as rewritten:

9 "§ 7A-16. Creation and organization.

10 ~~The Court of Appeals is created effective January 1, 1967. It~~  
11 ~~shall consist initially of six judges, elected by the qualified~~  
12 ~~voters of the State for terms of eight years. The Chief Justice~~  
13 ~~of the Supreme Court shall designate one of the judges as Chief~~  
14 ~~Judge, to serve in such capacity at the pleasure of the Chief~~  
15 ~~Justice. Before entering upon the duties of his office, a judge~~  
16 ~~of the Court of Appeals shall take the oath of office prescribed~~  
17 ~~for a judge of the General Court of Justice.~~

18 ~~The Governor on or after July 1, 1967, shall make temporary~~  
19 ~~appointments to the six initial judgeships. The appointees shall~~  
20 ~~serve until January 1, 1969. Their successors shall be elected at~~  
21 ~~the general election for members of the General Assembly in~~  
22 ~~November, 1968, and shall take office on January 1, 1969, to~~  
23 ~~serve for the remainder of the unexpired term which began on~~  
24 ~~January 1, 1967.~~

25 ~~Upon the appointment of at least five judges, and the~~  
26 ~~designation of a Chief Judge, the court is authorized to convene,~~  
27 ~~organize, and promulgate, subject to the approval of the Supreme~~  
28 ~~Court, such supplementary rules as it deems necessary and~~  
29 ~~appropriate for the discharge of the judicial business lawfully~~  
30 ~~assigned to it.~~

31 ~~Effective January 1, 1969, the number of judges is increased to~~  
32 ~~nine, and the Governor, on or after March 1, 1969, shall make~~  
33 ~~temporary appointments to the additional judgeships thus created.~~  
34 ~~The appointees shall serve until January 1, 1971. Their~~  
35 ~~successors shall be elected at the general election for members~~  
36 ~~of the General Assembly in November, 1970, and shall take office~~  
37 ~~on January 1, 1971, to serve for the remainder of the unexpired~~  
38 ~~term which began on January 1, 1969.~~

39 ~~Effective January 1, 1977, the number of judges is increased to~~  
40 ~~12; and the Governor, on or after July 1, 1977, shall make~~  
41 ~~temporary appointments to the additional judgeships thus created.~~  
42 ~~The appointees shall serve until January 1, 1979. Their~~  
43 ~~successors shall be elected at the general election for members~~  
44 ~~of the General Assembly in November, 1978, and shall take office~~

1 ~~on January 1, 1979, to serve the remainder of the unexpired term~~  
2 ~~which began on January 1, 1977.~~

3 The Court of Appeals shall consist of 12 judges, selected as  
4 provided in Article 1A of this Chapter. The Chief Justice of the  
5 Supreme Court shall designate one of the judges as Chief Judge to  
6 serve in such capacity at the pleasure of the Chief Justice.  
7 Before entering upon the duties of his office, a judge of the  
8 Court of Appeals shall take the oath of office prescribed for a  
9 judge of the General Court of Justice.

10 The Court of Appeals shall sit in panels of three judges each.  
11 The Chief Judge insofar as practicable shall assign the members  
12 to panels in such fashion that each member sits a substantially  
13 equal number of times with each other member. He shall preside  
14 over the panel of which he is a member, and shall designate the  
15 presiding judge of the other panel or panels.

16 Three judges shall constitute a quorum for the transaction of  
17 the business of the court, except as may be provided in G.S.  
18 7A-32.

19 In the event the Chief Judge is unable, on account of absence  
20 or temporary incapacity, to perform the duties placed upon him as  
21 Chief Judge, the Chief Justice shall appoint an acting Chief  
22 Judge from the other judges of the Court, to temporarily  
23 discharge the duties of Chief Judge."

24 Sec. 3.6 G.S. 163-106(c) reads as rewritten:

25 "(c) Time for Filing Notice of Candidacy. -- Candidates seeking  
26 party primary nominations for the following offices shall file  
27 their notice of candidacy with the State Board of Elections no  
28 earlier than 12:00 noon on the first Monday in January and no  
29 later than 12:00 noon on the first Monday in February preceding  
30 the primary:

31 Governor

32 Lieutenant Governor

33 All State executive officers

34 ~~Justices of the Supreme Court, Judges of the Court of Appeals~~

35 Judges of the district courts

36 United States Senators

37 Members of the House of Representatives of the United States

38 District attorneys

39 Candidates seeking party primary nominations for the following  
40 offices shall file their notice of candidacy with the county  
41 board of elections no earlier than 12:00 noon on the first Monday  
42 in January and no later than 12:00 noon on the first Monday in  
43 February preceding the primary:

44 State Senators

1 Members of the State House of Representatives  
2 All county offices.

3 Sec. 3.7. G.S. 163-106(d) reads as rewritten:

4 "(d) Notice of Candidacy for Certain Offices to Indicate  
5 Vacancy. -- In any primary in which there are ~~two or more~~  
6 ~~vacancies for Chief Justice and associate justices of the Supreme~~  
7 ~~Court, two or more vacancies for judge of the Court of Appeals,~~  
8 ~~or~~ two vacancies for United States Senator from North Carolina or  
9 two or more vacancies for the office of district court judge to  
10 be filled by nominations, each candidate shall, at the time of  
11 filing notice of candidacy, file with the State Board of  
12 Elections a written statement designating the vacancy to which he  
13 seeks nomination. Votes cast for a candidate shall be effective  
14 only for his nomination to the vacancy for which he has given  
15 notice of candidacy as provided in this subsection.

16 A person seeking party nomination for a specialized district  
17 judgeship established under G.S. 7A-147 shall, at the time of  
18 filing notice of candidacy, file with the State Board of  
19 Elections a written statement designating the specialized  
20 judgeship to which he seeks nomination."

21

22 Sec. 3.8 G.S. 163-107(a) reads as rewritten:

23 "(a) Fee Schedule. -- At the time of filing a notice of  
24 candidacy, each candidate shall pay to the board of elections  
25 with which he files under the provisions of G.S. 163-106 a filing  
26 fee for the office he seeks in the amount specified in the  
27 following tabulation:

28

29 Office Sought	Amount of Filing Fee
30 Governor	One percent (1%) of the annual salary of the office sought
31 Lieutenant Governor	One percent (1%) of the annual salary of the office sought
32 All State executive offices	One percent (1%) of the annual salary of the office sought
33 <del>All Justices, Judges, and</del>	One percent (1%) of the annual salary of the office sought
34 <u>Superior Court Judges,</u>	
35 <u>District Court Judges,</u>	
36 District Attorneys of the	
37 General Court of Justice	
38 United States Senator	One percent (1%) of the annual salary of the office sought
39	
40	
41	
42	
43	
44	

1	Members of the United States	One percent (1%) of the annual
2	House of Representatives	salary of the office sought
3	State Senator	One percent (1%) of the annual
4		salary of the office sought
5	Member of the State House of	One percent (1%) of the annual
6	Representatives	salary of the office sought
7	All county offices not	One percent (1%) of the annual
8	compensated by fees	salary of the office sought
9	County commissioners, if	Ten dollars (\$10.00)
10	compensated entirely by fees	
11	Members of county board of	Five dollars (\$5.00)
12	education, if compensated	
13	entirely by fees	
14	Sheriff, if compensated	Forty dollars (\$40.00), plus one
15	entirely by fees	percent (1%) of the income of
16		office above four thousand
17		dollars (\$4,000)
18	Clerk of superior court, if	Forty dollars (\$40.00), plus one
19	compensated entirely by fees	percent (1%) of the income of
20		office above four thousand
21		dollars (\$4,000)
22	Register of deeds, if	Forty dollars (\$40.00), plus one
23	compensated entirely by fees	percent (1%) of the income of
24		office above four thousand
25		dollars (\$4,000)
26	Any other county office, if	Twenty dollars (\$20.00), plus on
27	compensated entirely by fees	percent (1%) of the income of
28		office above two thousand doll
29		(\$2,000)
30	All county offices compensated	One percent (1%) of the first
31	partly by salary and partly	annual salary to be received
32	by fees	(exclusive of fees).

33 Sec. 3.9. G.S. 163-107.1(b) reads as rewritten:  
 34 "(b) If the candidate is seeking the office of United States  
 35 Senator, Governor, Lieutenant Governor, or any State executive  
 36 officer, ~~Justice of the Supreme Court or Judge of the Court of~~  
 37 ~~Appeals~~, the petition must be signed by 10,000 registered voters  
 38 who are members of the political party in whose primary the  
 39 candidate desires to run, except that in the case of a political  
 40 party as defined by G.S. 163-96(a)(2) which will be making  
 41 nominations by primary election, the petition must be signed by  
 42 ten percent (10%) of the registered voters of the State who are  
 43 affiliated with the same political party in whose primary the  
 44 candidate desires to run, or in the alternative, the petition

1 shall be signed by no less than 10,000 registered voters  
2 regardless of the voter's political party affiliation, whichever  
3 requirement is greater. The petition must be filed with the State  
4 Board of Elections not later than 12:00 noon on Monday preceding  
5 the filing deadline before the primary in which he seeks to run.  
6 The names on the petition shall be verified by the board of  
7 elections of the county where the signer is registered, and the  
8 petition must be presented to the county board of elections at  
9 least 15 days before the petition is due to be filed with the  
10 State Board of Elections. When a proper petition has been filed,  
11 the candidate's name shall be printed on the primary ballot."

12           Sec. 3.10. G.S. 163-111(c)(1) reads as rewritten:

13           "(1) A candidate who is apparently entitled to demand a  
14 second primary, according to the unofficial results, for one of  
15 the offices listed below, and desiring to do so, shall file a  
16 request for a second primary in writing or by telegram with the  
17 Executive Secretary-Director of the State Board of Elections no  
18 later than 12:00 noon on the seventh day (including Saturdays and  
19 Sundays) following the date on which the primary was conducted,  
20 and such request shall be subject to the certification of the  
21 official results by the State Board of Elections. If the vote  
22 certification by the State Board of Elections determines that a  
23 candidate who was not originally thought to be eligible to call  
24 for a second primary is in fact eligible to call for a second  
25 primary, the Executive Secretary-Director of the State Board of  
26 Elections shall immediately notify such candidate and permit him  
27 to exercise any options available to him within a 48-hour period  
28 following the notification:

29           Governor,  
30           Lieutenant Governor,  
31           All State executive officers,  
32           ~~Justices, Judges, or Superior Court Judges,~~  
33           District Court Judges or District Attorneys of  
34           the General Court of Justice, other than  
35           superior court judge,  
36           United States Senators,  
37           Members of the United States House of  
38           Representatives,  
39           State Senators in multi-county senatorial  
40           districts, and  
41           Members of the State House of Representatives  
42           in multi-county representative districts.

43           Sec. 3.11. G.S. 163-177 reads as rewritten:  
44   "§ 163-177. Disposition of duplicate abstracts.

1 Within six hours after the returns of a primary or election  
2 have been canvassed and the results judicially determined, the  
3 chairman of the county board of elections shall mail, or  
4 otherwise deliver, to the State Board of Elections the  
5 duplicate-original abstracts prepared in accordance with G.S.  
6 163-176 for all offices and referenda for which the State Board  
7 of Elections is required to canvass the votes and declare the  
8 results including:

9 President and Vice-President of the United States  
10 Governor, Lieutenant Governor, and all other State executive  
11 officers  
12 United States Senators  
13 Members of the House of Representatives of the United States  
14 Congress  
15 Justices, Judges, and Superior Court Judges, District Court  
16 Judges and District Attorneys of the General Court of  
17 Justice  
18 State Senators in multi-county senatorial districts  
19 Members of the State House of Representatives in multi-county  
20 representative districts  
21 Constitutional amendments and propositions submitted to the  
22 voters of the State.

23 One duplicate abstract prepared in accordance with G.S. 163-176  
24 for all offices and referenda for which the county board of  
25 elections is required to canvass the votes and declare the  
26 results (and which are listed below) shall be retained by the  
27 county board, which shall forthwith publish and declare the  
28 results; the second duplicate abstract shall be mailed to the  
29 chairman of the State Board of Elections, to the end that there  
30 be one set of all primary and election returns available at the  
31 seat of government.

32 All county offices  
33 State Senators in single-county senatorial districts  
34 Members of the State House of Representatives in single-county  
35 representative districts  
36 Propositions submitted to the voters of one county.

37 If the chairman of the county board of elections fails or  
38 neglects to transmit duplicate abstracts to the chairman of the  
39 State Board of Elections within the time prescribed in this  
40 section, he shall be guilty of a misdemeanor. Provided, that the  
41 penalty shall not apply if the chairman was prevented from  
42 performing the prescribed duty because of sickness or other  
43 unavoidable delay, but the burden of proof shall be on the

1 chairman to show that his failure to perform was due to sickness  
2 or unavoidable delay."

3           Sec. 3.12. G.S. 163-192 reads as rewritten:

4 "§ 163-192. State Board of Elections to prepare abstracts and  
5 declare results of primaries and elections.

6 (a) After Primary. -- At the conclusion of its canvass of the  
7 primary election, the State Board of Elections shall prepare  
8 separate abstracts of the votes cast:

9           (1) For Governor and all State officers, ~~justices of~~  
10 ~~the Supreme Court, judges of the Court of Appeals,~~  
11 and United States Senators.

12           (2) For members of the United States House of  
13 Representatives for the several congressional  
14 districts in the State.

15           (3) For district court judges for the several district  
16 court districts in the State.

17           (3a) For superior court judges for the several superior  
18 court districts in the State.

19           (4) For district attorney in the several prosecutorial  
20 districts in the State.

21           (5) For State Senators in the several senatorial  
22 districts in the State composed of more than one  
23 county.

24           (6) For members of the State House of Representatives  
25 in the several representative districts in the  
26 State composed of more than one county.

27 Abstracts prepared by the State Board of Elections under this  
28 subsection shall state the total number of votes cast for each  
29 candidate of each political party for each of the various offices  
30 canvassed by the State Board of Elections. They shall also state  
31 the name or names of the person or persons whom the State Board  
32 of Elections shall ascertain and judicially determine by the  
33 count to be nominated for each office.

34 Abstracts prepared under this subsection shall be signed by the  
35 members of the State Board of Elections in their official  
36 capacity and shall have the great seal of the State affixed  
37 thereto.

38 (b) After General Election. -- At the conclusion of its  
39 canvass of the general election, the State Board of Elections  
40 shall prepare abstracts of the votes cast:

41           (1) For President and Vice-President of the United  
42 States, when an election is held for those offices.

- 1           (2) For Governor and all State officers, ~~justices of~~  
2           ~~the Supreme Court, judges of the Court of Appeals,~~  
3           and United States Senators.  
4           (3) For members of the United States House of  
5           Representatives for the several congressional  
6           districts in the State.  
7           (4) For district court judges for the several district  
8           court districts as defined in G.S. 7A-133 in the  
9           State.  
10          (4a) For superior court judges for the several superior  
11          court districts in the State.  
12          (5) For district attorney in the several prosecutorial  
13          districts in the State.  
14          (6) For State Senators in the several senatorial  
15          districts in the State composed of more than one  
16          county.  
17          (7) For members of the State House of Representatives  
18          in the several representative districts in the  
19          State composed of more than one county.  
20          (8) For and against any constitutional amendments or  
21          propositions submitted to the people.

22        Abstracts prepared by the State Board of Elections under this  
23        subsection shall state the names of all persons voted for, the  
24        office for which each received votes, and the number of legal  
25        ballots cast for each candidate for each office canvassed by the  
26        State Board of Elections. They shall also state the name or  
27        names of the person or persons whom the State Board of Elections  
28        shall ascertain and judicially determine by the count to be  
29        elected to each office.

30        Abstracts prepared under this subsection shall be signed by the  
31        members of the State Board of Elections in their official  
32        capacity and shall have the great seal of the State affixed  
33        thereto.

34        (c) Disposition of Abstracts of Returns. -- The State Board of  
35        Elections shall file with the Secretary of State the original  
36        abstracts of returns prepared by it under the provisions of  
37        subsections (a) and (b) of this section, and also the duplicate  
38        county abstracts transmitted to the State Board of Elections  
39        under the provisions of G.S. 163-177. Upon the request of the  
40        Legislative Services Office, the Secretary of State shall submit  
41        a copy of the original abstracts to that Office."

42                Sec. 3.13. G.S. 163-194 reads as rewritten:  
43        "§ 163-194. Governor to issue commissions to certain elected  
44        officials.

1 Every person duly elected to one of the offices listed below,  
2 upon obtaining a certificate of his election from the Secretary  
3 of State under the provisions of G.S. 163-193, shall procure from  
4 the Governor a commission attesting his election to the specified  
5 office, which the Governor shall issue upon production of the  
6 Secretary of State's certificate:

7 Members of the United States House of Representatives,  
8 ~~Justices, Judges, and Superior Court Judges, District Court~~  
9 ~~Judges and District Attorneys of the General Court of Justice."~~

10 Sec. 3.14. G.S. 163-1 is amended in the table by  
11 deleting the entries for "Justices and Judges of the Appellate  
12 Division".

13 Sec. 3.15. G.S. 163-9 reads as rewritten:

14 "§ 163-9. Filling vacancies in ~~State and~~ district judicial  
15 offices.

16 (a) Vacancies occurring in the ~~offices of Justice of the~~  
17 ~~Supreme Court, judge of the Court of Appeals, and office of judge~~  
18 of the superior court for causes other than expiration of term  
19 shall be filled by appointment of the Governor. An appointee to  
20 the office of Justice of the Supreme Court or judge of the Court  
21 of Appeals shall hold office until January 1 next following the  
22 election for members of the General Assembly that is held more  
23 than 60 days after the vacancy occurs, at which time an election  
24 shall be held for an eight-year term and until a successor is  
25 elected and qualified.

26 (b) Except for judges specified in the next paragraph of this  
27 subsection, an appointee to the office of judge of superior court  
28 shall hold his place until the next election for members of the  
29 General Assembly that is held more than 60 days after the vacancy  
30 occurs, at which time an election shall be held to fill the  
31 unexpired term of the office.

32 Appointees for judges of the superior court from any district:

- 33 (1) With only one resident judge; or  
34 (2) In which no county is subject to section 5 of the  
35 Voting Rights Act of 1965,

36 shall hold the office until the next election of members of the  
37 General Assembly that is held more than 60 days after the vacancy  
38 occurs, at which time an election shall be held to fill an eight-  
39 year term.

40 (c) When the unexpired term of the office in which the vacancy  
41 has occurred expires on the first day of January succeeding the  
42 next election for members of the General Assembly, the Governor  
43 shall appoint to fill that vacancy for the unexpired term of the  
44 office.

1 (d) Vacancies in the office of district judge which occur  
2 before the expiration of a term shall not be filled by election.  
3 Vacancies in the office of district judge shall be filled in  
4 accordance with G.S. 7A-142."

5 Sec. 3.16. Sections 3.1 through 3.15 of this act are  
6 effective only if the constitutional amendment proposed by  
7 Section 1 of this act is approved by the qualified voters in  
8 accordance with Section 2 of this act.

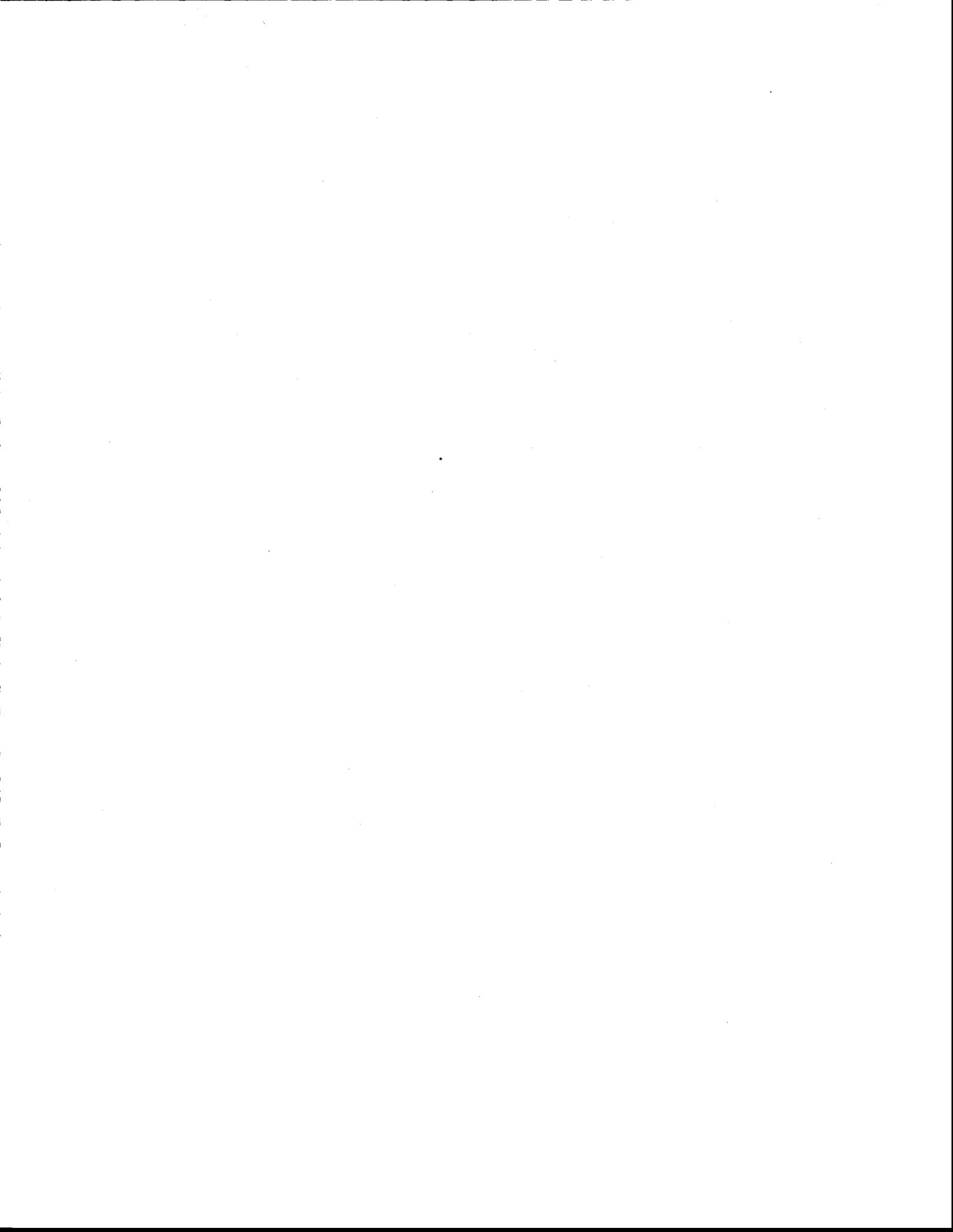
9 Sec. 4. This act is effective when it becomes law.

### **ANALYSIS OF PROPOSED LEGISLATION**

Subject to voter approval on November 7, 1998, this legislation amends the North Carolina Constitution to provide that, on and after January 1, 1999, the Governor shall nominate persons to fill vacancies in the offices of Chief Justice, Associate Justice, or judges of the Court of Appeals. Appointments by the Governor are subject to confirmation of the General Assembly by three-fifths of the members of each house present and voting. The terms of the justices and judges appointed by the Governor extends until July 1 after the next statewide election for members of the General Assembly that is held more than eighteen months after the date of appointment. Appointed justices and judges who wish to continue in office must be approved by voters for a regular term of eight years in a nonpartisan election.

The legislation provides that the terms of elected appellate judges who are in office on January 1, 1999, and whose term extends beyond that date is extended through June 30 of the year following the eighth year after the date the justice or judge was last elected to office. The term of appointed appellate judges in office on January 1, 1999, whose term extends beyond that date, shall end on June 30, 2001. These judges may stand for retention for a regular term at the 2000 election for members of the General Assembly.

## **APPENDIX C**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S/H

D

98-RGZ-012(4.23)  
THIS IS A DRAFT 19-MAY-98 10:08:55

Short Title: Victim and Witness Assistants.

(Public)

---

Sponsors:

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO RESTORE PROVISIONS THAT VICTIM AND WITNESS ASSISTANTS  
3 SHALL ONLY PROVIDE SERVICES FOR VICTIMS OF CRIME AND WITNESSES  
4 IN CRIMINAL CASES.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 7A-347 reads as rewritten:  
7 "~~§ 7A-347. Assistants for administrative and victim and witness~~  
8 ~~services. Victim and witness assistants.~~  
9 ~~Assistant for administrative and victim and witness services~~  
10 Victim and witness assistant positions are established under the  
11 district attorneys' offices. Each prosecutorial district is  
12 allocated at least one ~~assistant for administrative and victim~~  
13 ~~and witness services~~ victim and witness assistant to be employed  
14 by the district attorney. The Administrative Office of the Courts  
15 shall allocate additional assistants to prosecutorial districts  
16 on the basis of need and within available appropriations. Each  
17 district attorney may also use any volunteer or other personnel  
18 to assist the assistant. The assistant is responsible for  
19 coordinating efforts of the law-enforcement and judicial systems  
20 to assure that each victim and witness is provided fair treatment

1 under Article 45 of Chapter 15A, Fair Treatment for Victims and  
2 Witnesses and shall ~~also provide administrative and legal support~~  
3 ~~to the district attorney's office.~~ be used for no other purpose,  
4 except as may be approved pursuant to G.S. 7A-348."

5 Section 2. G.S. 7A-348 reads as rewritten:

6 "§ 7A-348. Training and supervision of assistants for  
7 ~~administrative and victim and witness services.~~ victim and  
8 witness assistants.

9 Pursuant to the provisions of G.S. 7A-413, the Conference of  
10 District Attorneys shall:

- 11 (1) Assist in establishing uniform statewide training  
12 for ~~assistants for administrative and victim and~~  
13 ~~witness services;~~ victim and witness services;
- 14 (2) Assist in the implementation and supervision of  
15 this program; and
- 16 (3) With the Director of the Administrative Office of  
17 the Courts, report annually to the Joint  
18 Legislative Commission on Governmental Operations  
19 on the implementation and effectiveness of this  
20 act, beginning on or before February 1, 1987."

21 Section 3. G.S. 15A-826 reads as rewritten:

22 "§ 15A-826. Assistants for administrative and victim and witness  
23 ~~services.~~ Victim and witness assistants.

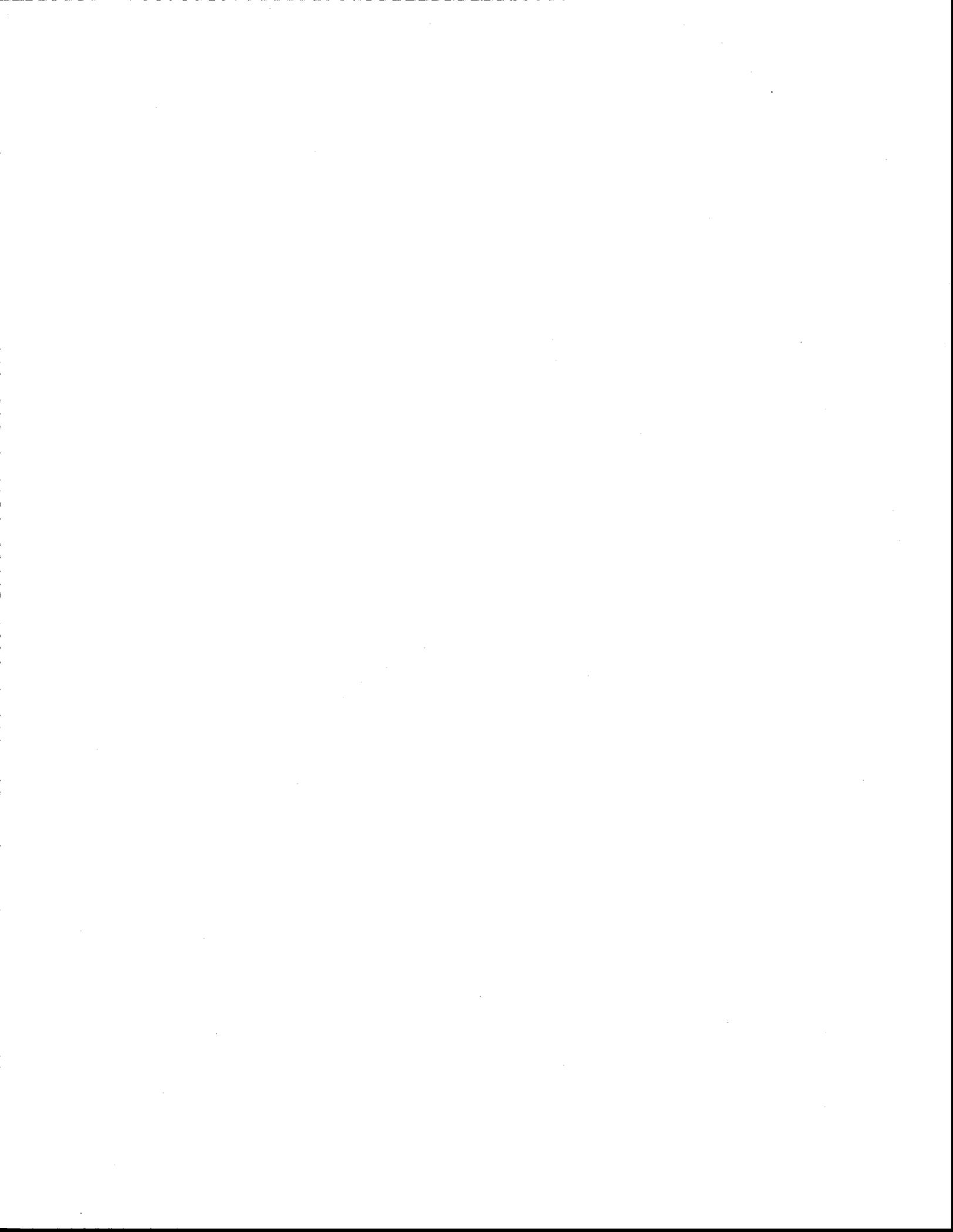
24 ~~In addition to providing administrative and legal support to~~  
25 ~~the district attorney's office, assistants for administrative and~~  
26 ~~victim and witness services~~ Victim and witness assistants are  
27 responsible for coordinating efforts within the law-enforcement  
28 and judicial systems to assure that each victim and witness is  
29 treated in accordance with this Article."

30 Section 4. This act becomes effective July 1, 1998.

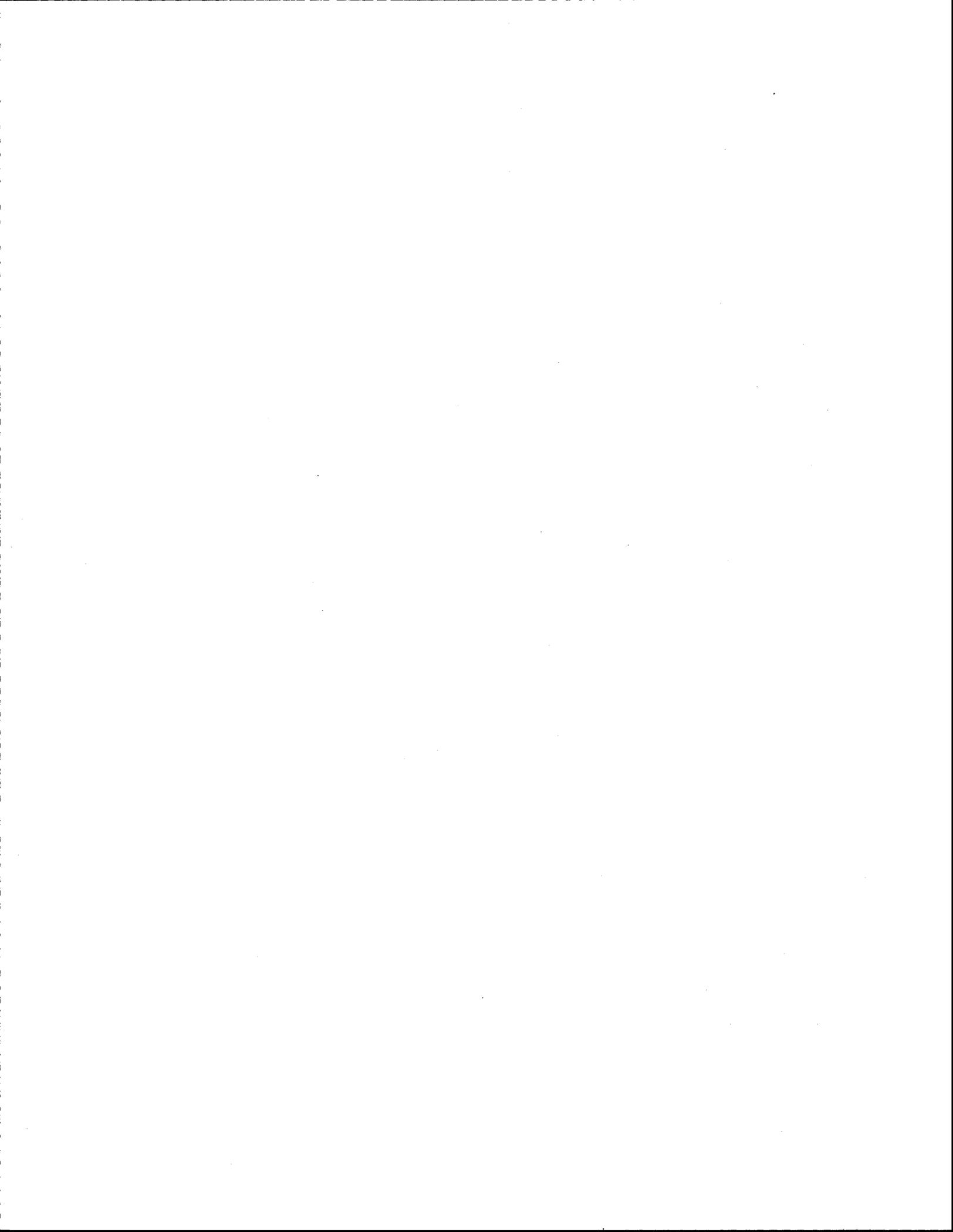
31

### **ANALYSIS OF PROPOSED LEGISLATION**

During the 1997 Session of the General Assembly, Section 18.7 of Senate Bill 352 (the Budget Bill) provided that victim and witness assistants would, in addition to their duties to assure fair treatment for victims and witnesses, provide administrative and legal support to the district attorney's office. The proposed legislation provides that victim and witness assistants shall only provide services to crime victims and witnesses in criminal case. This was the law prior to the change in 1997.



**APPENDIX D**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S/H

D

98-RGZ-013B(4.23)  
THIS IS A DRAFT 13-MAY-98 17:15:52

Short Title: Small Claims Judgments.

(Public)

---

Sponsors:

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND SMALL CLAIMS PROCEDURE TO CLARIFY THAT THE  
3 DISTRICT COURT HAS AUTHORITY TO HEAR CERTAIN MOTIONS FOR RELIEF  
4 FROM MAGISTRATES JUDGMENTS.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 7A-228(a) reads as rewritten:  
7 "(a) ~~With the consent of the chief district court judge, a~~  
8 ~~magistrate may~~ The chief district court judge may authorize  
9 magistrates to hear motions to set aside an order or judgment for  
10 mistake or excusable neglect pursuant to G.S. 1A-1, Rule 60(b)(1)  
11 and order a new trial before a magistrate. The exercise of the  
12 authority of the chief district court judge in allowing  
13 magistrates to hear Rule 60(b)(1) motions shall not be construed  
14 to limit the suthority of the district court to hear motions  
15 pursuant to Rule 60(b)(1) through (6) of the Rules of Civil  
16 Procedure for relief from a judgment or order entered by a  
17 magistrate and, if granted, to order a new trial before a  
18 magistrate. After final disposition before the magistrate, the  
19 sole remedy for an aggrieved party is appeal for trial de novo  
20 before a district court judge or a jury. Notice of appeal may be

1 given orally in open court upon announcement or after entry of  
2 judgment. If not announced in open court, written notice of  
3 appeal must be filed in the office of the clerk of superior court  
4 within 10 days after entry of judgment. The appeal must be  
5 perfected in the manner set out in subsection (b). Upon  
6 announcement of the appeal in open court or upon receipt of the  
7 written notice of appeal, the appeal shall be noted upon the  
8 judgment. If the judgment was mailed to the parties, then the  
9 time computations for appeal of such judgment shall be pursuant  
10 to G.S. 1A-1, Rule 6."

11           Section 2. This act is effective when it becomes law.

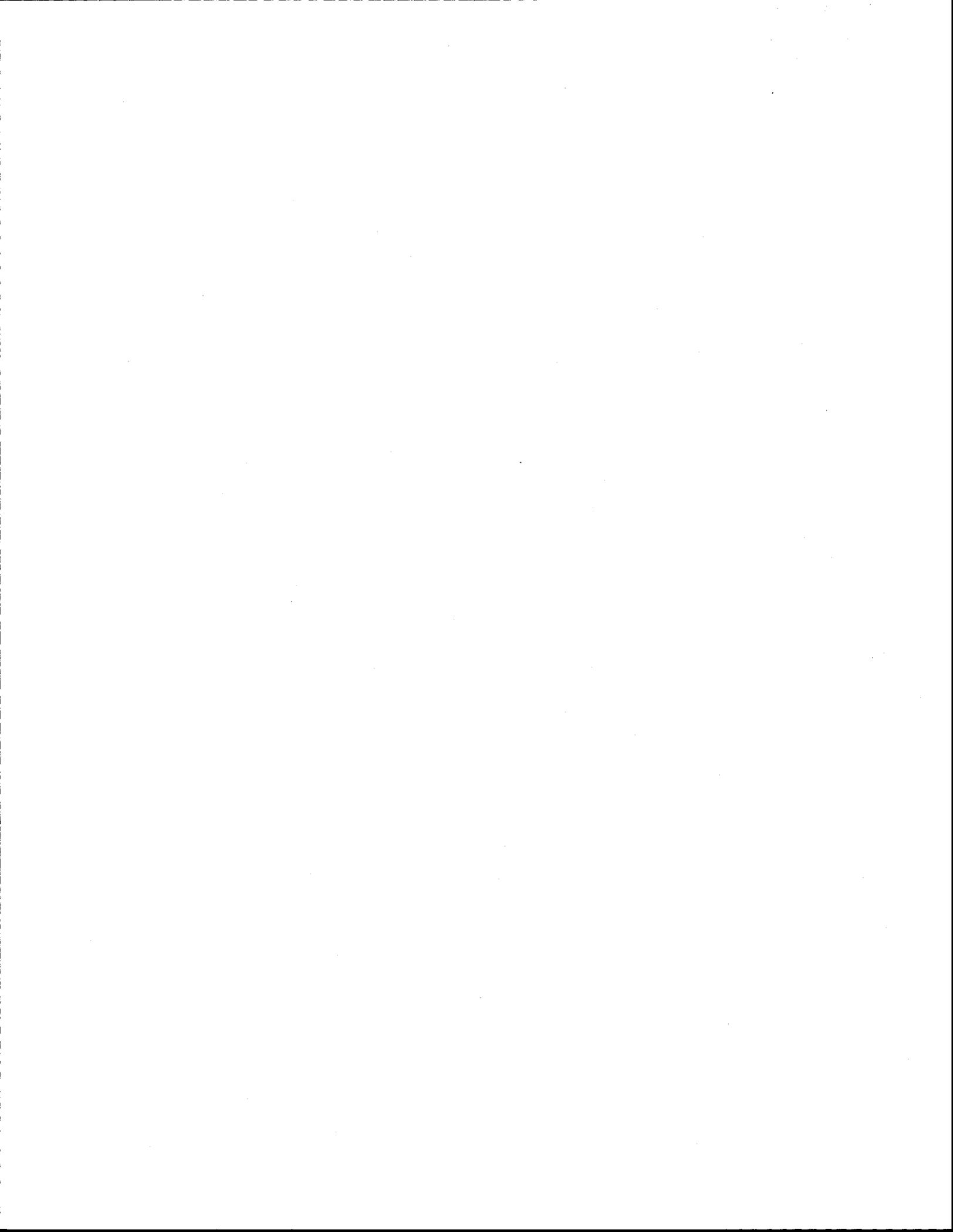
12

## **ANALYSIS OF PROPOSED LEGISLATION**

G.S. 7A-228 provides that "with the consent of the chief district court judge, a magistrate may set aside an order or judgment for mistake or excusable neglect pursuant to Rule 60(b)(1) and order a new trial before a magistrate." In 1995, the Court of Appeals interpreted this statute to exclude district court judges from hearing **any** Rule 60(b) motions to set aside a judgment. The proposed legislation clarifies G.S. 7A-228 to authorize district court judges to hear any Rule 60(b) motion whether or not magistrates are authorized by the chief district court judge to hear a motion under Rule 60(b)(1).



## **APPENDIX E**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S/H

D

98-RGZ-004(4.23)  
THIS IS A DRAFT 13-MAY-98 11:47:21

Short Title: IV-D UIFSA Cases/Represent.

(Public)

---

Sponsors:

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT THE CHILD SUPPORT ENFORCEMENT AGENCY SHALL  
3 REPRESENT OBLIGEES IN IV-D UIFSA CASES AND TO APPROPRIATE  
4 FUNDS.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 52C-3-308 reads as rewritten:  
7 "§ 52C-3-308. Representation of obligee.  
8 ~~It shall be the duty of the district attorney to represent the~~  
9 ~~obligee in proceedings authorized by this Chapter unless~~  
10 ~~alternative arrangements are made by the obligee. In a IV-D case,~~  
11 ~~the support enforcement agency shall provide legal representation~~  
12 ~~for the obligee in proceedings authorized by this Chapter unless~~  
13 ~~the obligee makes alternative arrangements. In a non-IV-D case,~~  
14 ~~the district attorney shall represent the obligee in proceedings~~  
15 ~~authorized by this Chapter unless the obligee makes alternative~~  
16 ~~arrangements. An obligee may employ private counsel to represent~~  
17 ~~the obligee in proceedings authorized by this Chapter."~~  
18 Section 2. There is appropriated from the General Fund  
19 to the Department of Human Resources the sum of four hundred  
20 twenty thousand dollars (\$420,000) for the 1998-99 fiscal year to

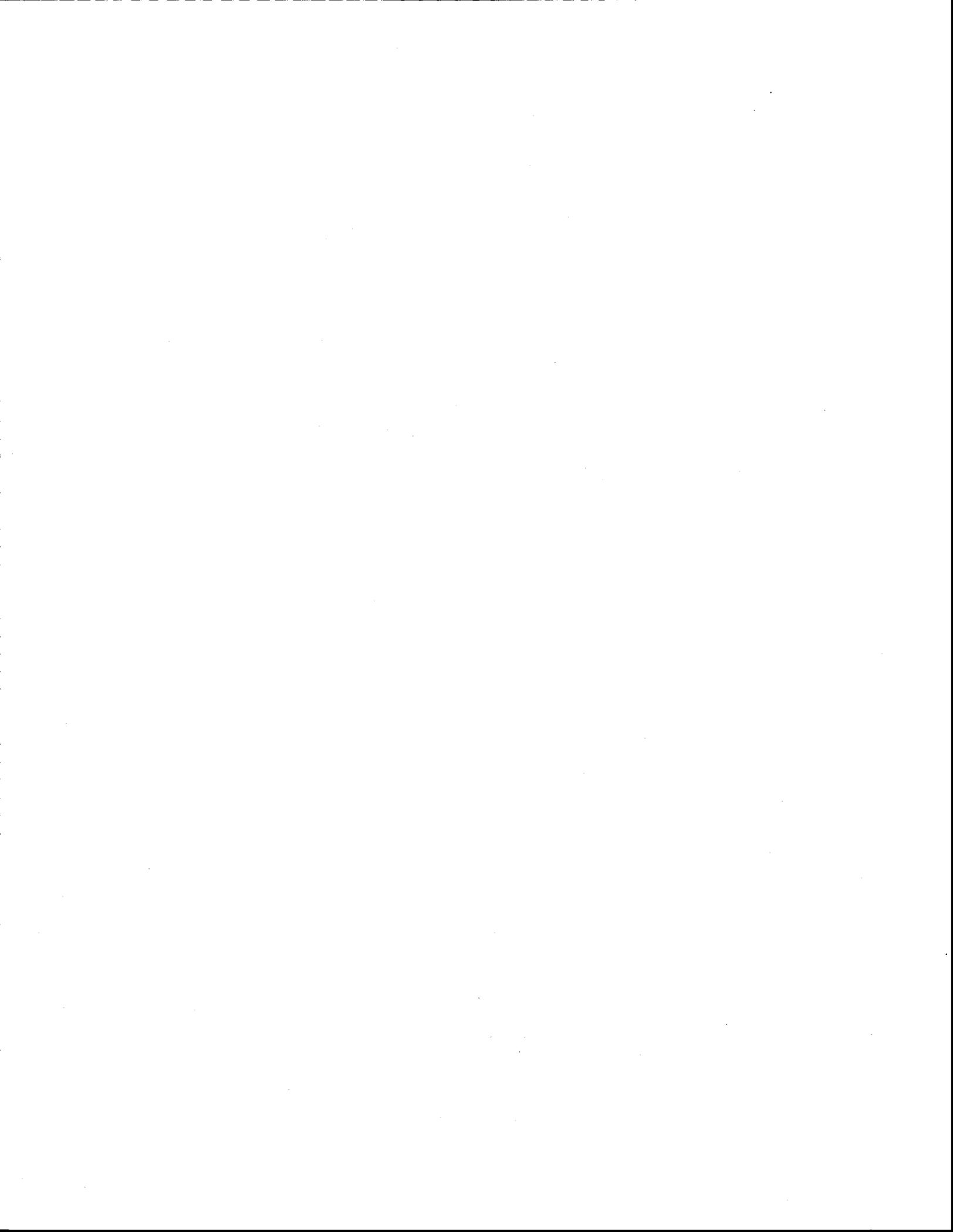
1 implement the provisions of this act, to be distributed among  
2 both county and state child support agencies.

3           Section 3. This act becomes effective July 1, 1998.

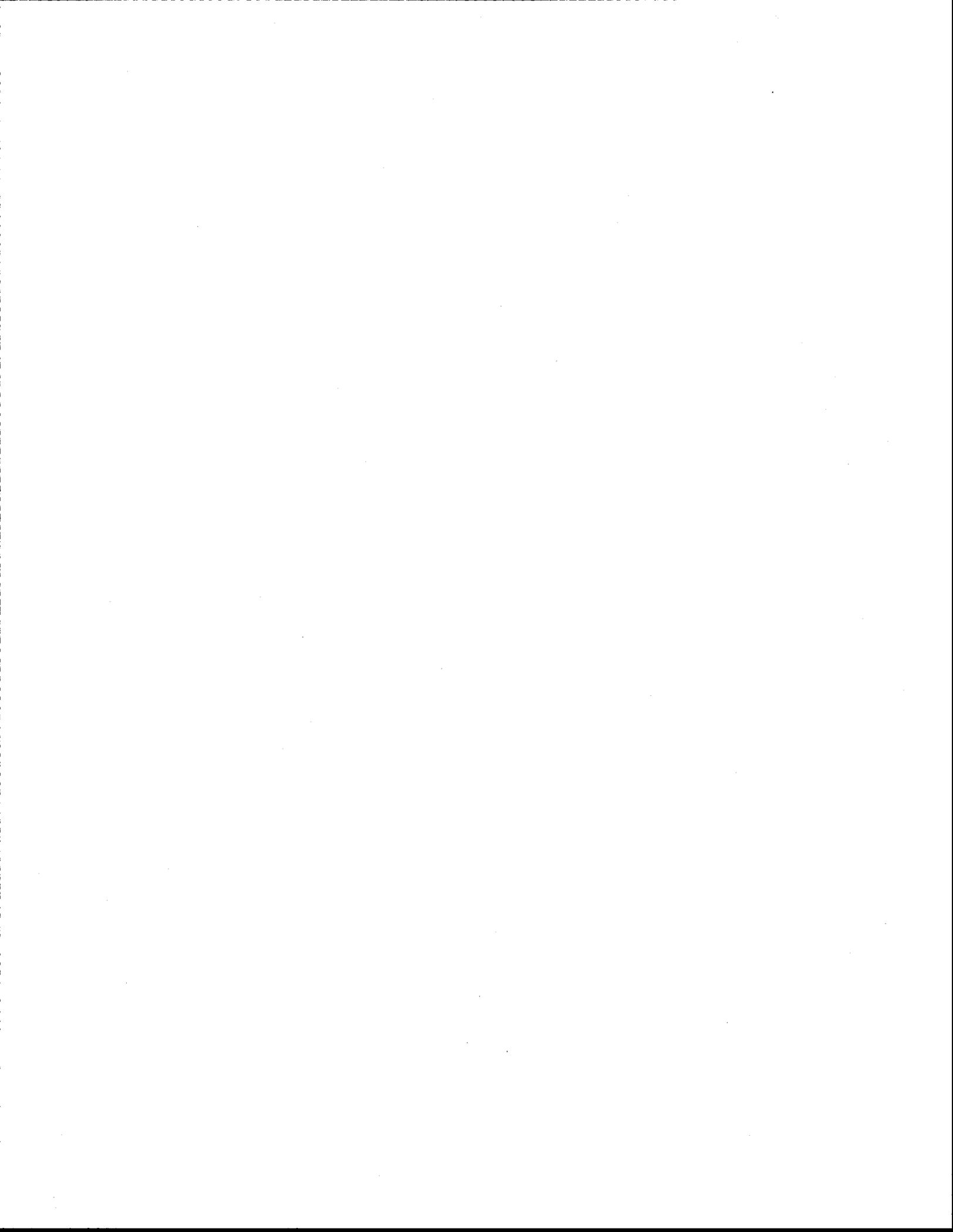
### **ANALYSIS OF PROPOSED LEGISLATION**

This legislation would provide that the local child support enforcement office, rather than the district attorney's office, represent the obligee in a IV-D interstate child support case under the Uniform Interstate Family Support Act (UIFSA). The legislation also appropriates \$420,000 for the 1998-99 fiscal year to pay for the state and local shares of providing this representation.

The legislation would be effective on July 1, 1998.



**APPENDIX F**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S/H

D

98-RGZ-005(4.23)  
THIS IS A DRAFT 13-MAY-98 11:11:15

Short Title: No Ins. Points/15 MPH Over Limit.

(Public)

---

Sponsors:

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT THERE IS NO INSURANCE PREMIUM SURCHARGE OR  
3 ASSESSMENT OF POINTS FOR A CONVICTION FOR SPEEDING FIFTEEN  
4 MILES PER HOUR OR LESS OVER THE SPEED LIMIT.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 58-36-75(f) reads as rewritten:  
7 "(f) The subclassification plan shall provide that with  
8 respect to a conviction for a 'violation of speeding ~~10~~ 15 miles  
9 per hour or less over the speed ~~limit~~" limit, or 10 miles per  
10 hour over the speed limit where the speed limit is 70 miles per  
11 hour or more,' there shall be no premium surcharge nor any  
12 assessment of points unless there is a driving record consisting  
13 of a conviction or convictions for a moving traffic violation or  
14 violations, except for a prayer for judgment continued for any  
15 moving traffic violation, during the three years immediately  
16 preceding the date of application or the preparation of the  
17 renewal. The subclassification plan shall also provide that with  
18 respect to a prayer for judgment continued for any moving traffic  
19 violation, there shall be no premium surcharge nor any assessment  
20 of points unless the vehicle owner, principal operator, or any  
21 licensed operator in the owner's household has a driving record  
22 consisting of a prayer or prayers for judgment continued for any  
23 moving traffic violation or violations during the three years  
24 immediately preceding the date of application or the preparation

1 of the renewal. For the purpose of this subsection, a 'prayer for  
2 judgment continued' means a determination of guilt by a jury or a  
3 court though no sentence has been imposed. For the purpose of  
4 this subsection, a 'violation of speeding ~~10~~ 15 miles per hour or  
5 less over the speed ~~limit~~" limit, or 10 miles per hour over the  
6 speed limit where the speed limit is 70 miles per hour or more,'  
7 does not include the offense of speeding in a school zone in  
8 excess of the posted school zone speed limit."

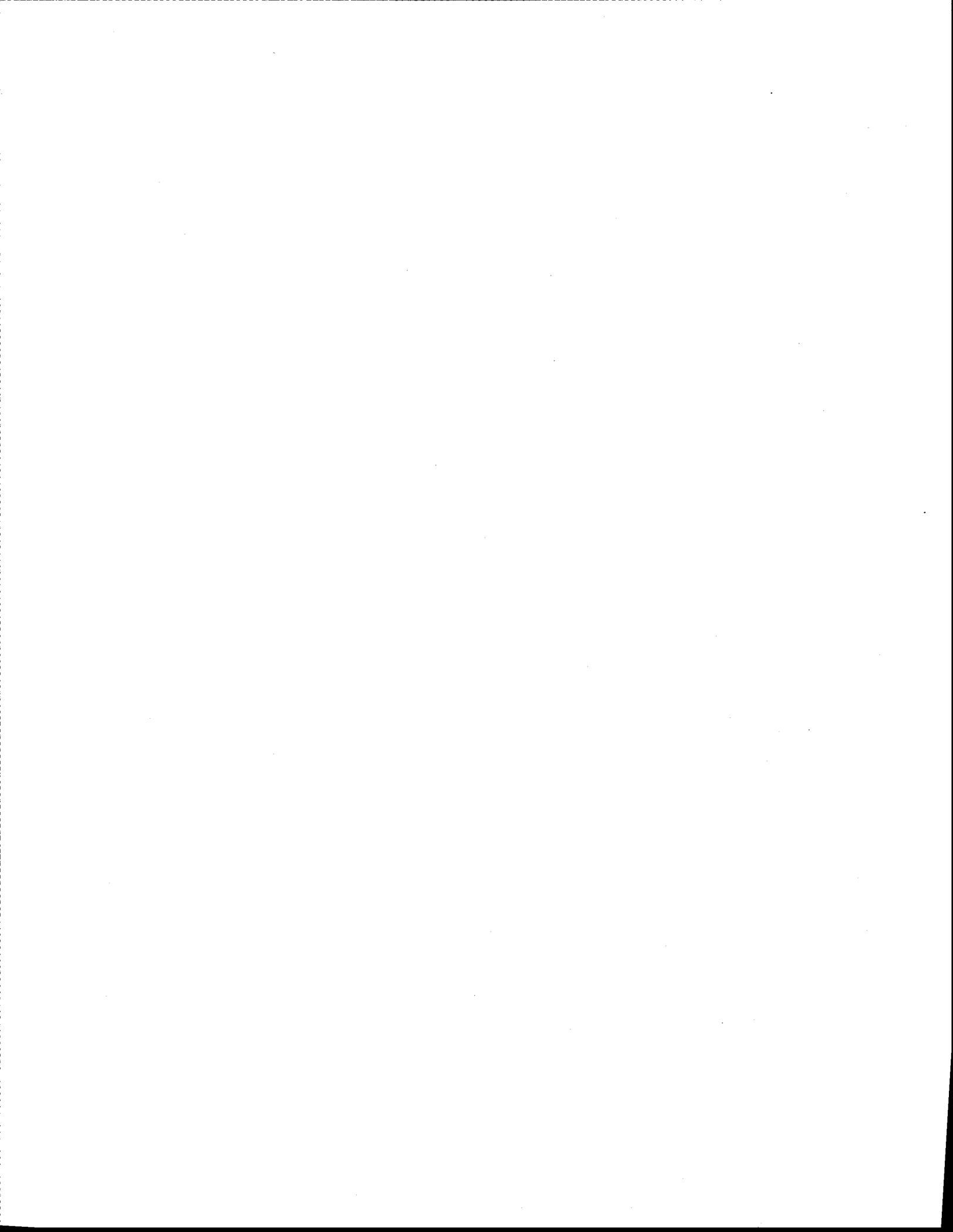
9           Section 2. The North Carolina Rate Bureau shall develop  
10 an amendment to the subclassification plan consistent with the  
11 provisions of this act. The Bureau shall file the amendment with  
12 the Commissioner no later than October 1, 1998, and the amendment  
13 shall become effective January 1, 1999.

14           Section 3. Section 2 of this act is effective when it  
15 becomes law. The remainder of this act becomes effective January  
16 1, 1999, and applies to violations occurring on or after January  
17 1, 1999.

## **ANALYSIS OF PROPOSED LEGISLATION**

Under current law, there is no insurance premium surcharge or assessment of points for a conviction of speeding 10 miles per hour or less over the speed limit. The proposed legislation would amend G.S. 58-36-75 to provide that there is no insurance premium surcharge or assessment of points for a conviction of speeding 15 miles per hour or less over the speed limit where the speed limit less than 70 miles per hour.

The bill becomes effective January 1, 1999 and applies to violation occurring on or after that date.



**APPENDIX G**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S/H

D

98-RGZ-006(4.23)  
THIS IS A DRAFT 13-MAY-98 11:13:44

Short Title: Habit. Felon Determination.

(Public)

---

Sponsors:

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO RECODIFY THE LAW CONCERNING HABITUAL FELONS AND VIOLENT  
3 HABITUAL FELONS, TO PROVIDE THAT THE ISSUE OF WHETHER A  
4 DEFENDANT IS AN HABITUAL FELON OR A VIOLENT HABITUAL FELON  
5 SHALL BE DETERMINED BY THE TRIAL JUDGE, AND TO MAKE OTHER  
6 CHANGES.  
7 The General Assembly of North Carolina enacts:  
8 Section 1. G.S. 14-7.1 is recodified as G.S. 15A-  
9 1340.13A; the remainder of Article 2A of Chapter 14 of the  
10 General Statutes is repealed.  
11 Section 2. G.S. 14-7.1, as recodified by Section 1 of  
12 this act, reads as rewritten:  
13 "§ 15A-1340.13A. ~~Persons defined as habitual~~ Habitual felons.  
14 ~~Any person who has been convicted of or pled guilty to three~~  
15 ~~felony offenses in any federal court or state court in the United~~  
16 ~~States or combination thereof is declared to be an habitual~~  
17 ~~felon. For the purpose of this Article, a felony offense is~~  
18 ~~defined as an offense which is a felony under the laws of the~~  
19 ~~State or other sovereign wherein a plea of guilty was entered or~~  
20 ~~a conviction was returned regardless of the sentence actually~~  
21 ~~imposed. Provided, however, that federal offenses relating to the~~  
22 ~~manufacture, possession, sale and kindred offenses involving~~  
23 ~~intoxicating liquors shall not be considered felonies for the~~  
24 ~~purposes of this Article. For the purposes of this Article,~~

~~1 felonies committed before a person attains the age of 18 years  
2 shall not constitute more than one felony. The commission of a  
3 second felony shall not fall within the purview of this Article  
4 unless it is committed after the conviction of or plea of guilty  
5 to the first felony. The commission of a third felony shall not  
6 fall within the purview of this Article unless it is committed  
7 after the conviction of or plea of guilty to the second felony.  
8 Pleas of guilty to or convictions of felony offenses prior to  
9 July 6, 1967, shall not be felony offenses within the meaning of  
10 this Article. Any felony offense to which a pardon has been  
11 extended shall not for the purpose of this Article constitute a  
12 felony. The burden of proving such pardon shall rest with the  
13 defendant and the State shall not be required to disprove a  
14 pardon.~~

15 (a) Definitions. -- The following definitions shall apply in  
16 this section when determining a person's status as an habitual  
17 felon:

18 (1) Felony. -- An offense that is a felony under the  
19 laws of the State or other sovereign wherein a plea  
20 of guilty was entered or a conviction was returned  
21 regardless of the sentence actually imposed. The  
22 term does not include, however, federal offenses  
23 relating to the manufacture, possession, sale of,  
24 and kindred offenses involving intoxicating  
25 liquors. For the purposes of this section,  
26 felonies committed before a person attains the age  
27 of 18 years shall not constitute more than one  
28 felony. The commission of a second felony shall not  
29 fall within the purview of this section unless it  
30 is committed after the conviction of or plea of  
31 guilty to the first felony. The commission of a  
32 third felony shall not fall within the purview of  
33 this section unless it is committed after the  
34 conviction of or plea of guilty to the second  
35 felony. Pleas of guilty to or convictions of  
36 felonies before July 6, 1967, are not felonies for  
37 the purposes of this section. A felony offense to  
38 which a pardon has been extended is not a felony  
39 for the purposes of this section. The burden of  
40 proving the pardon shall rest with the defendant;  
41 the State is not required to disprove a pardon.

42 (2) Habitual felon. -- A person who has been convicted  
43 of or pled guilty to three or more felony offenses  
44 in any federal court or state court in the United

1                   States or combination thereof prior to committing  
2                   the current offense.

3    (b) Sentencing of Habitual Felons. -- When a person is  
4 convicted of or pleads guilty to any felony under the laws of  
5 this State, the district attorney may, upon sentencing, submit to  
6 the trial judge, as an enhanced sentencing factor, the  
7 determination of the person's status as an habitual felon. If the  
8 trial judge determines, upon submission by the district attorney  
9 of the defendant's status as an habitual felon that the felony  
10 was committed by an habitual felon, the trial judge shall  
11 sentence the person as a Class C felon, except where the felon  
12 has been sentenced as a Class A, B1, or B2 felon. In determining  
13 the prior record level of the person sentenced as an habitual  
14 felon, the convictions used to establish the person's status as  
15 an habitual felon shall not be used. A sentence imposed on an  
16 habitual felon pursuant to this section shall run consecutively  
17 with and shall commence at the expiration of any sentence being  
18 served by the person sentenced under this section.

19   (c) Disclosure of Habitual Felon Status. -- If the district  
20 attorney fails to serve written notice upon the defendant no  
21 later than 20 working days before trial of the defendant's status  
22 as an habitual felon and the district attorney's intention to  
23 submit to the trial judge the defendant's status as an habitual  
24 felon, the defendant may not be sentenced as an habitual felon  
25 under this section.

26   (d) Evidence of Prior Convictions. -- In sentencing a person  
27 under this section, the record or records of prior convictions of  
28 felony offenses may be used by the court to determine if the  
29 person has been convicted of former felony offenses. A prior  
30 conviction may be shown by stipulation of the parties or by the  
31 original or a certified copy of the court record of the prior  
32 conviction. The original or certified copy of the court record,  
33 bearing the same name as that by which the defendant is charged,  
34 shall be sufficient to show that the defendant named therein is  
35 the same as the defendant before the court and to show the facts  
36 set out in the record, and the burden of any showing to the  
37 contrary shall be upon the defendant."

38                   Section 3. G.S. 14-7.7 is recodified as G.S. 15A-  
39 1340.13B; the remainder of Article 2B of Chapter 14 of the  
40 General Statutes is repealed.

41                   Section 4. G.S. 14-7.7, as recodified by Section 3 of  
42 this act, reads as rewritten:

43 "§ 15A-1340.13B. ~~Persons defined as violent~~ Violent habitual  
44 felons.

~~1 (a) Any person who has been convicted of two violent felonies  
2 in any federal court, in a court of this or any other state of  
3 the United States, or in a combination of these courts is  
4 declared to be a violent habitual felon. For purposes of this  
5 Article, "convicted" means the person has been adjudged guilty of  
6 or has entered a plea of guilty or no contest to the violent  
7 felony charge, and judgment has been entered thereon when such  
8 action occurred on or after July 6, 1967. This Article does not  
9 apply to a second violent felony unless it is committed after the  
10 conviction or plea of guilty or no contest to the first violent  
11 felony. Any felony to which a pardon has been extended shall  
12 not, for the purposes of this Article, constitute a felony. The  
13 burden of proving a pardon shall rest with the defendant, and  
14 this State shall not be required to disprove a pardon.  
15 Conviction as an habitual felon shall not, for purposes of this  
16 Article, constitute a violent felony.~~

~~17 (b) For purposes of this Article, "violent felony" includes  
18 the following offenses:~~

- ~~19 (1) All Class A through E felonies.~~
- ~~20 (2) Any repealed or superseded offense substantially  
21 equivalent to the offenses listed in subdivision  
22 (1).~~
- ~~23 (3) Any offense committed in another jurisdiction  
24 substantially equivalent to the offenses set forth  
25 in subdivision (1) or (2).~~

~~26 (a) Definitions. -- The following definitions shall apply in  
27 this section when determining a person's status as a violent  
28 habitual felon:~~

- ~~29 (1) Violent felony. -- An offense that is one of the  
30 following:  
31 a. All Class A through E felonies.  
32 b. Any repealed or superseded offense  
33 substantially equivalent to the offenses  
34 listed in sub-subdivision a.  
35 c. Any offense committed in another jurisdiction  
36 substantially equivalent to the offenses set  
37 forth in sub-subdivisions a. or b.~~

~~38 A person is convicted of a violent felony if he or  
39 she has been adjudged guilty of or has entered a  
40 plea of guilty to a violent felony charge, and a  
41 judgment has been entered on or after July 6, 1967.  
42 This section does not apply to a second violent  
43 felony unless it is committed after the conviction  
44 or plea of guilty or no contest to the first~~

1 violent felony. Any felony to which a pardon has  
2 been extended shall not, for the purposes of this  
3 section, constitute a violent felony. The burden of  
4 proving a pardon shall rest with the defendant, and  
5 the State shall not be required to disprove a  
6 pardon. Conviction and punishment as an habitual  
7 felon shall not, for the purposes of this section,  
8 constitute a violent felony.

9 (2) Violent habitual felon. -- Any person who has been  
10 convicted of two violent felonies in any federal  
11 court, in a court of this or any other state of the  
12 United States, or in a combination of these courts.

13 (b) Sentencing of Violent Habitual Felons. -- When a person is  
14 convicted of or pleads guilty to any violent felony under the  
15 laws of this State, the district attorney may, upon sentencing,  
16 submit to the trial judge, as an enhanced sentencing factor, the  
17 determination of the person's status as a violent habitual felon.  
18 If the trial judge determines, upon the submission by the  
19 district attorney of the person's status as a violent habitual  
20 felon that the violent felony was committed by a violent habitual  
21 felon, the trial judge shall sentence the person to life  
22 imprisonment without parole, except where the death penalty is  
23 imposed. Life imprisonment without parole means that the person  
24 will spend the remainder of the person's natural life in prison.  
25 The sentencing judge may not suspend the sentence and may not  
26 place the person sentenced on probation. Sentences for violent  
27 habitual felons imposed under this Article shall run  
28 consecutively with and shall commence at the expiration of any  
29 other sentence being served by the person.

30 (c) Disclosure of Violent Habitual Felon Status. -- If the  
31 district attorney fails to serve written notice upon the  
32 defendant no later than 20 working days before trial of the  
33 defendant's status as a violent habitual felon and the district  
34 attorney's intention to submit to the trial judge the defendant's  
35 status as a violent habitual felon, the defendant may not be  
36 sentenced as a violent habitual felon under this section.

37 (d) Evidence of Prior Convictions. -- In sentencing a person  
38 under this section, the records of prior convictions of violent  
39 felonies may be used by the court to determine if the person has  
40 been convicted of former violent felonies. A prior conviction  
41 may be shown by stipulation of the parties or by the original or  
42 a certified copy of the court record of the prior conviction.  
43 The original or certified copy of the court record, bearing the  
44 same name as that by which the defendant is charged, shall be

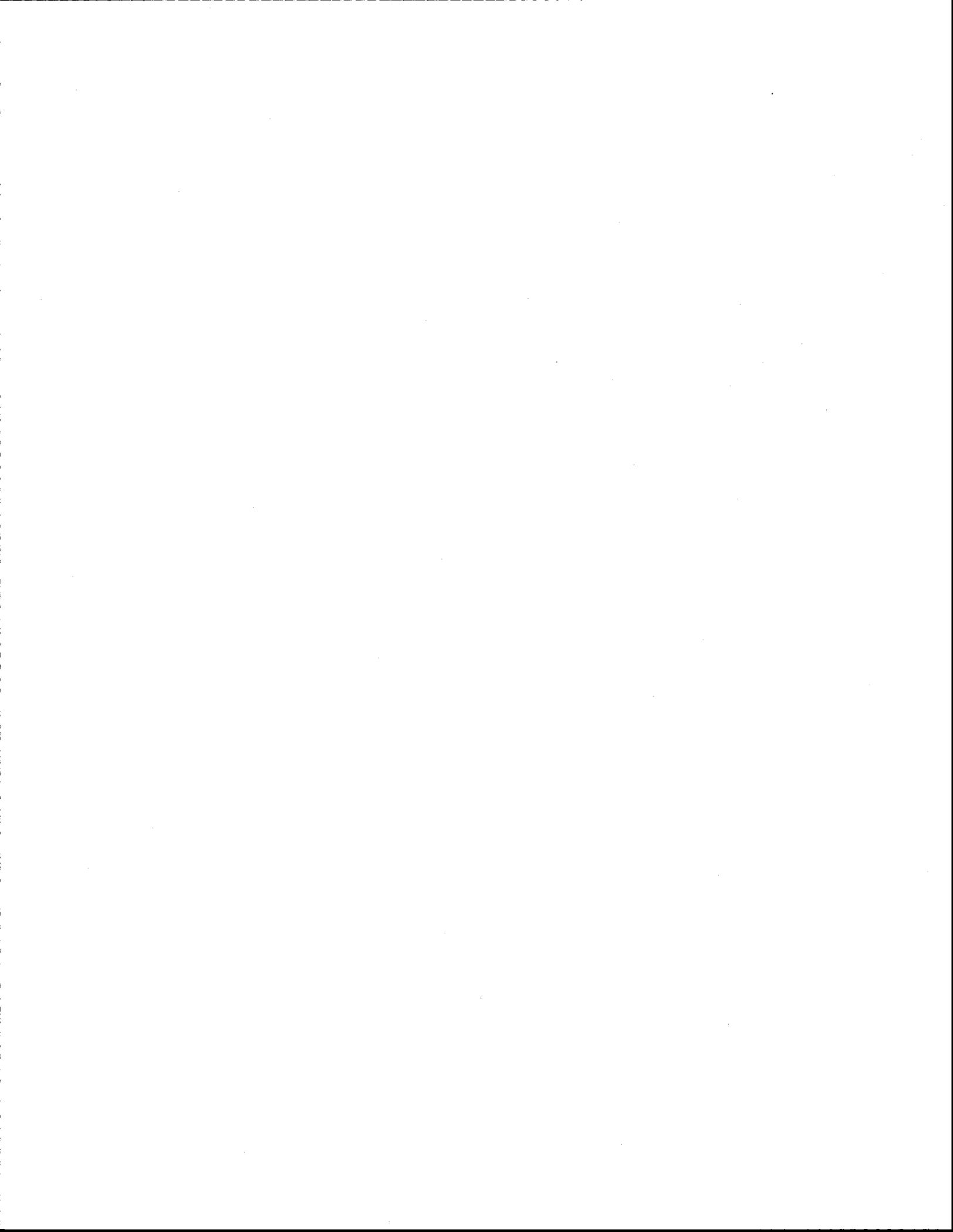
1 prima facie evidence that the defendant named therein is the same  
2 as the defendant before the court, and shall be prima facie  
3 evidence of the facts set out therein, and the burden of any  
4 showing to the contrary shall be upon the defendant."

5           Section 5. This act becomes effective December 1, 1998,  
6 and applies to offenses committed on or after that date.

### **ANALYSIS OF PROPOSED LEGISLATION**

Under current law, a defendant charged with a felony may also be charged with being an habitual felon or a violent habitual felon depending on the defendant's prior felony record. However, if a charge of habitual or violent habitual felon is made, it is treated as a separate proceeding which ultimately must be determined separately by the jury.

The proposed legislation amends the General Statutes to provide that the charge of habitual felon or violent habitual felon is tried before the trial judge without a jury.



**APPENDIX H**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S/H

D

98-RGZ-007(4.23)  
THIS IS A DRAFT 18-MAY-98 16:46:26

Short Title: Restitution/Civil Judgment.

(Public)

---

Sponsors:

---

Referred to:

---

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW THE ENFORCEMENT OF AN ORDER FOR RESTITUTION IN A  
3 CRIMINAL CASE IN THE SAME MANNER AS A CIVIL JUDGMENT, TO CREATE  
4 AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF SUCH  
5 A JUDGMENT, AND TO CHANGE THE ORDER OF PRIORITY FOR  
6 DISBURSEMENT OF FUNDS IN A CRIMINAL CASE.  
7 The General Assembly of North Carolina enacts:  
8           Section 1. G.S. 15A-1343(d) reads as rewritten:  
9       "(d) Restitution as a Condition of Probation. -- As a  
10 condition of probation, a defendant may be required to make  
11 restitution or reparation to an aggrieved party or parties who  
12 shall be named by the court for the damage or loss caused by the  
13 defendant arising out of the offense or offenses committed by the  
14 defendant. When restitution or reparation is a condition  
15 imposed, the court shall hold a hearing to determine the amount  
16 of restitution or reparation due the aggrieved party or parties.  
17 The court shall take into consideration the resources of the  
18 defendant, including all real and personal property owned by the  
19 defendant and the income derived from such property, his ability  
20 to earn, his obligation to support dependents, and such other

1 matters as shall pertain to his ability to make restitution or  
2 reparation, but the court is not required to make findings of  
3 fact or conclusions of law on these matters when the sentence is  
4 imposed. The amount must be limited to that supported by the  
5 record, and the court may order partial restitution or reparation  
6 when it appears that the damage or loss caused by the offense or  
7 offenses is greater than that which the defendant is able to pay.  
8 An order providing for restitution or reparation, as a condition  
9 of supervised or unsupervised probation, except an order  
10 resulting from a worthless check, may be enforced in the same  
11 manner as a civil judgment as provided in this subsection. Upon a  
12 finding that restitution in a sum certain remains due and  
13 payable, and that the defendant's probation should be terminated  
14 or revoked, the judge presiding at the probation termination or  
15 revocation hearing shall order that a judgment be docketed  
16 pursuant to G.S. 1-233 et seq. in the county of the original  
17 conviction as of the date of notification to the clerk in that  
18 county. The clerk shall add to the amount of the judgment to be  
19 docketed amounts equal to the standard fees for docketing,  
20 copying, certification, and mailing, as appropriate, and shall  
21 collect any other fees or charges incurred as in the enforcement  
22 of other civil judgments. The clerk shall notify the victim by  
23 first class mail at the victim's last known address of the  
24 docketing of the judgment and provide the victim with a certified  
25 copy of the order directing entry of the civil judgment. A civil  
26 judgment under this section shall be reduced by any payments made  
27 by the defendant pursuant to the criminal case, including  
28 payments made pursuant to work release privileges. An order  
29 providing for restitution or reparation shall in no way abridge  
30 the right of any aggrieved party to bring a civil action against  
31 the defendant for money damages arising out of the offense or  
32 offenses committed by the defendant, but any amount paid by the  
33 defendant under the terms of an order or judgment as provided  
34 herein shall be credited against any judgment rendered against  
35 the defendant in such civil action. As used herein,  
36 'restitution' shall mean (i) compensation for damage or loss as  
37 could ordinarily be recovered by an aggrieved party in a civil  
38 action, and (ii) reimbursement to the State for the total amount  
39 of a judgment authorized by G.S. 7A-455(b). As used herein,  
40 'reparation' shall include but not be limited to the performing

1 of community services, volunteer work, or doing such other acts  
2 or things as shall aid the defendant in his rehabilitation. As  
3 used herein 'aggrieved party' includes individuals, firms,  
4 corporations, associations, other organizations, and government  
5 agencies, whether federal, State or local, including the Crime  
6 Victims Compensation Fund established by G.S. 15B-23. Provided,  
7 that no government agency shall benefit by way of restitution  
8 except for particular damage or loss to it over and above its  
9 normal operating costs and except that the State may receive  
10 restitution for the total amount of a judgment authorized by G.S.  
11 7A-455(b). A government agency may benefit by way of reparation  
12 even though the agency was not a party to the crime provided that  
13 when reparation is ordered, community service work shall be  
14 rendered only after approval has been granted by the owner or  
15 person in charge of the property or premises where the work will  
16 be done. Provided further, that no third party shall benefit by  
17 way of restitution or reparation as a result of the liability of  
18 that third party to pay indemnity to an aggrieved party for the  
19 damage or loss caused by the defendant, but the liability of a  
20 third party to pay indemnity to an aggrieved party or any payment  
21 of indemnity actually made by a third party to an aggrieved party  
22 does not prohibit or limit in any way the power of the court to  
23 require the defendant to make complete and full restitution or  
24 reparation to the aggrieved party for the total amount of the  
25 damage or loss caused by the defendant. Restitution or  
26 reparation measures are ancillary remedies to promote  
27 rehabilitation of criminal offenders, to provide for compensation  
28 to victims of crime, and to reimburse the Crime Victims  
29 Compensation Fund established by G.S. 15B-23, and shall not be  
30 construed to be a fine or other punishment as provided for in the  
31 Constitution and laws of this State."

32 Section 2. G.S. 148-57.1 is amended by adding a new  
33 subsection (b1) to read:

34 "(b1) If the Post-Release Supervision and Parole Commission  
35 imposes restitution as a condition of parole or post-release  
36 supervision, the Commission shall notify the sentencing court of  
37 the restitution including the amount of restitution. The  
38 sentencing court shall order the clerk of court in the county of  
39 conviction to docket a civil judgment pursuant to G.S. 1-233 et  
40 seq. in the amount of restitution. The clerk shall add to the

1 amount of the judgment to be docketed amounts equal to the  
2 standard fees for docketing, copying, certification, and mailing,  
3 as appropriate, and shall collect any other fees or charges  
4 incurred as in the enforcement of other civil judgments. The  
5 clerk shall notify the victim by first class mail at the victim's  
6 last known address of the docketing of the judgment and provide  
7 the victim with a certified copy of the order directing entry of  
8 the civil judgment. An order providing for a civil judgment under  
9 this subsection shall in no way abridge the right of any  
10 aggrieved party to bring a civil action against the defendant for  
11 money damages arising out of the offense or offenses committed by  
12 the defendant, but any amount paid by the defendant under the  
13 terms of a civil judgment as provided herein shall be credited  
14 against any judgment rendered against the defendant in such civil  
15 action."

16 Section 3. G.S. 1C-1601(e) reads as rewritten:

17 (e) Exceptions. -- The exemptions provided in this Article are  
18 inapplicable to claims

- 19 (1) Of the United States or its agencies as provided by  
20 federal law;
- 21 (2) Of the State or its subdivisions for taxes,  
22 appearance bonds or fiduciary bonds;
- 23 (3) Of lien by a laborer for work done and performed  
24 for the person claiming the exemption, but only as  
25 to the specific property affected;
- 26 (4) Of lien by a mechanic for work done on the  
27 premises, but only as to the specific property  
28 affected;
- 29 (5) For payment of obligations contracted for the  
30 purchase of the specific real property affected;
- 31 (6) Repealed by Session Laws 1981 (Regular Session,  
32 1982), c. 1224, s. 6, effective September 1, 1982;
- 33 (7) For contractual security interests in the specific  
34 property affected; provided, that the exemptions  
35 shall apply to the debtor's household goods  
36 notwithstanding any contract for a nonpossessory,  
37 nonpurchase money security interest in any such  
38 goods;
- 39 (8) For statutory liens, on the specific property  
40 affected, other than judicial liens;

- 1           (9) For child support, alimony or distributive award  
2           order pursuant to Chapter 50 of the General  
3           ~~Statutes. Statutes;~~  
4           (10) For criminal restitution orders docketed as civil  
5           judgments pursuant to G.S. 15A-1343(d).

6           Section 4. G.S. 7A-304(d) reads as rewritten:

7           (d) In any criminal case in which the liability for costs,  
8 fines, restitution, or any other lawful charge has been finally  
9 determined, the clerk of superior court shall, unless otherwise  
10 ordered by the presiding judge, disburse such funds when paid in  
11 accordance with the following priorities:

- 12           (1)           Sums in restitution prorated among the persons  
13                       entitled thereto;  
14           ~~(1)~~(2)       Costs due the county;  
15           ~~(2)~~(3)       Costs due the city;  
16           ~~(3)~~(4)       Fines to the county school fund;  
17           ~~(4)~~           ~~Sums in restitution prorated among the persons~~  
18                       ~~entitled thereto;~~  
19           (5)           Costs due the State;  
20           (6)           Attorney's fees.

21           Sums in restitution received by the clerk of superior court  
22 shall be disbursed when:

- 23           (1)           Complete restitution has been received; or  
24           (2)           When, in the opinion of the clerk, additional  
25           payments in restitution will not be collected;  
26                       or  
27           (3)           Upon the request of the person or persons  
28           entitled thereto; and  
29           (4)           In any event, at least once each calendar  
30           year.

31           Section 5. This act becomes effective December 1, 1998,  
32 and applies to offenses committed on or after that date.

## ANALYSIS OF PROPOSED LEGISLATION

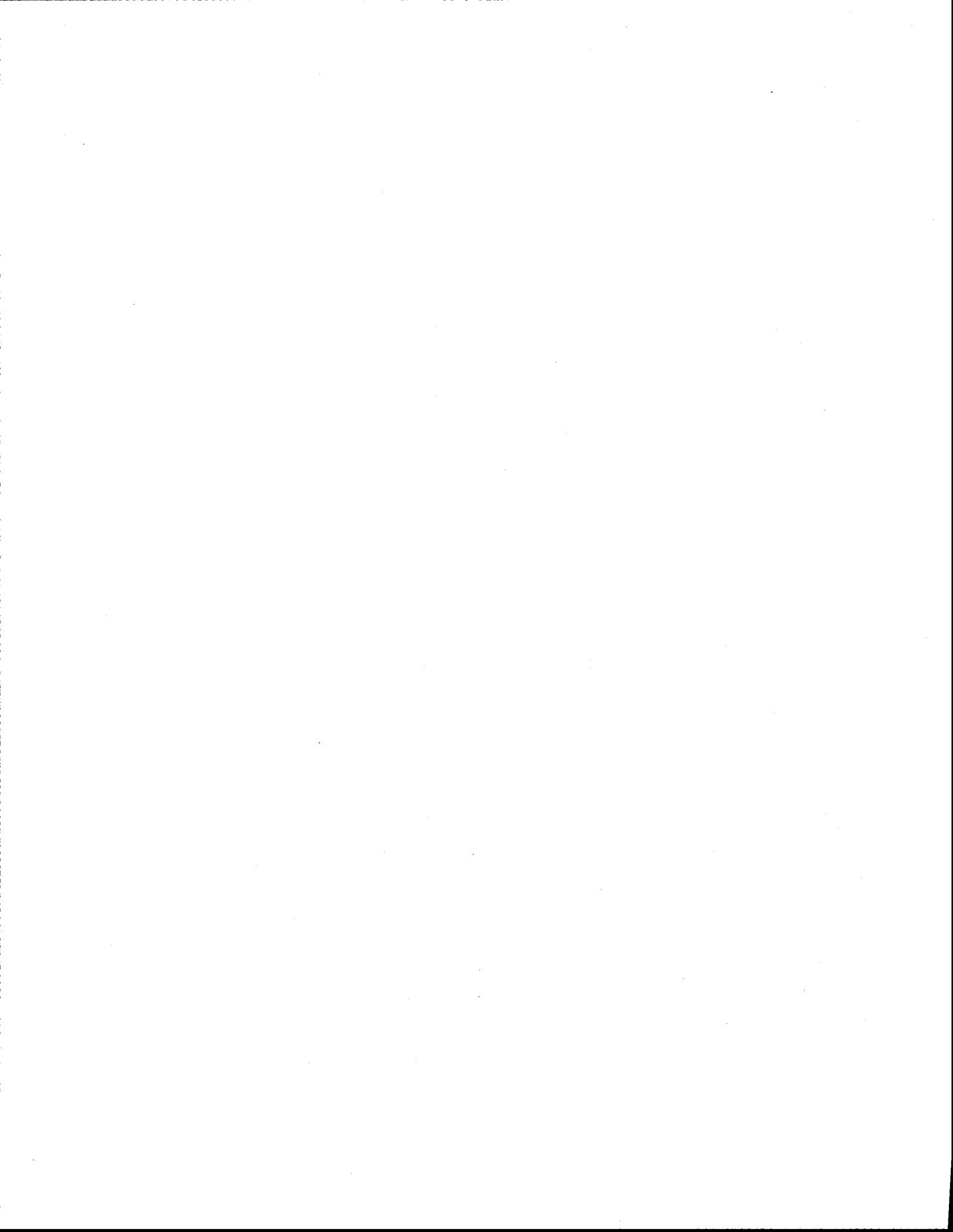
G.S. 15A-1343(d) provides the process by which a court may order restitution to a victim as a condition of a defendant's probation. G.S. 148-57.1 allows a judge to make a recommendation of restitution as a condition of parole or post release supervision. If the judge makes a recommendation of restitution, the Post-Release Supervision and Parole Commission has the authority to make restitution a condition of parole or post-release supervision.

For probationary sentences, section 1 of the proposed legislation amends G.S. 15A-1343(d) to require a judge, upon termination or revocation of probation, to order the docketing of a civil judgment against the defendant in the amount of restitution owed. For active sentences, section 2 amends G.S. 148-57.1 to require the Post-Release Supervision and Parole Commission to notify the sentencing court of a restitution order. The sentencing court then orders the clerk to docket a civil judgment in the amount of the order of restitution issued by the Commission. Under both sections, the clerk may add to the judgment amounts equal to standard fees or charges incurred in the enforcement of judgments.

Section 3 of the proposed legislation would provide an exception to the exemptions from execution for these civil judgments.

Section 4 provides that of the funds paid into the court by a defendant, restitution to the victim will be disbursed first, before other costs and fines. Current law provides that restitution is disbursed fourth, after costs due the county, costs due the city, and fines to the county school fund.

**APPENDIX I**





1 complaint, counterclaim, cross-complaint or third-party  
2 complaint:

3 (1) The amount in controversy is computed without  
4 regard to interest and costs.

5 (2) Where monetary relief is prayed, the amount prayed  
6 for is in controversy unless the pleading in  
7 question shows to a legal certainty that the amount  
8 claimed cannot be recovered under the applicable  
9 measure of damages. The value of any property  
10 seized in attachment, claim and delivery, or other  
11 ancillary proceeding, is not in controversy and is  
12 not considered in determining the amount in  
13 controversy.

14 (3) Where no monetary relief is sought, but the relief  
15 sought would establish, enforce, or avoid an  
16 obligation, right or title, the value of the  
17 obligation, right, or title is in controversy.  
18 Where the owner or legal possessor of property  
19 seeks recovery of property on which a lien is  
20 asserted pursuant to G.S. 44A-4(a) the amount in  
21 controversy is that portion of the asserted lien  
22 which is disputed. The judge may require by rule or  
23 order that parties make a good faith estimate of  
24 the value of any nonmonetary relief sought.

25 (4) a. Except as provided in subparagraph c of this  
26 subdivision, where a single party asserts two  
27 or more properly joined claims, the claims are  
28 aggregated in computing the amount in  
29 controversy.

30 b. Except as provided in subparagraph c, where  
31 there are two or more parties properly joined  
32 in an action and their interests are aligned,  
33 their claims are aggregated in computing the  
34 amount in controversy.

35 c. No claims are aggregated ~~which~~ that are  
36 mutually exclusive and in the alternative, or  
37 ~~which~~ that are successive, in the sense that  
38 satisfaction of one claim will bar recovery  
39 upon the other.

1 d. Where there are two or more claims not subject  
2 to aggregation the highest claim is the amount  
3 in controversy.

4 (5) Where the value of the relief to a claimant differs  
5 from the cost thereof to an opposing party, the  
6 higher amount is used in determining the amount in  
7 controversy."

8 Section 2. G.S. 1A-1, Rule 8(a) reads as rewritten:

9 "(a) Claims for relief. -- A pleading ~~which~~ that sets forth a  
10 claim for relief, whether an original claim, counterclaim,  
11 crossclaim, or third-party claim shall contain

12 (1) A short and plain statement of the claim  
13 sufficiently particular to give the court and the  
14 parties notice of the transactions, occurrences, or  
15 series of transactions or occurrences, intended to  
16 be proved showing that the pleader is entitled to  
17 relief, and

18 (2) A demand for judgment for the relief to which ~~he~~  
19 ~~deems himself~~ the pleader claims to be entitled.  
20 Relief in the alternative or of several different  
21 types may be demanded. In all negligence actions,  
22 and in all claims for punitive damages in any civil  
23 action, wherein the matter in controversy exceeds  
24 the sum or value of ~~ten thousand dollars (\$10,000),~~  
25 twenty-five thousand dollars (\$25,000), the  
26 pleading shall not state the demand for monetary  
27 relief, but shall state that the relief demanded is  
28 for damages incurred or to be incurred in excess of  
29 ~~ten thousand dollars (\$10,000).~~ twenty-five  
30 thousand dollars (\$25,000). However, at any time  
31 after service of the claim for relief, any party  
32 may request of the claimant a written statement of  
33 the monetary relief sought, and the claimant shall,  
34 within 30 days after such service, provide ~~such~~  
35 that statement, which shall not be filed with the  
36 clerk until the action has been called for trial or  
37 entry of default entered. ~~Such~~ The statement may be  
38 amended in the manner and at times as provided by  
39 Rule 15."

40 Section 3. G.S. 7A-37.1 reads as rewritten:

1 "§ 7A-37.1. Statewide court-ordered, nonbinding arbitration in  
2 certain civil actions.

3 (a) The General Assembly finds that court-ordered, nonbinding  
4 arbitration may be a more economical, efficient and satisfactory  
5 procedure to resolve certain civil actions than by traditional  
6 civil litigation and therefore authorizes court-ordered  
7 nonbinding arbitration as an alternative civil procedure, subject  
8 to these provisions.

9 (b) The Supreme Court of North Carolina may adopt rules  
10 governing this procedure and may supervise its implementation and  
11 operation through the Administrative Office of the Courts. These  
12 rules shall ensure that no party is deprived of the right to jury  
13 trial and that any party dissatisfied with an arbitration award  
14 may have trial de novo.

15 (c) This procedure may be employed in civil actions where  
16 claims do not exceed ~~fifteen thousand dollars (\$15,000)~~. twenty-  
17 five thousand dollars (\$25,000).

18 (d) This procedure may be implemented in a judicial district,  
19 in selected counties within a district, or in any court within a  
20 district, if the Director of the Administrative Office of the  
21 Courts, and the cognizant Senior Resident Superior Court Judge or  
22 the Chief District Court Judge of any court selected for this  
23 procedure, determine that use of this procedure may assist in the  
24 administration of justice toward achieving objectives stated in  
25 subsection (a) of this section in a judicial district, county, or  
26 court. The Director of the Administrative Office of the Courts,  
27 acting upon the recommendation of the cognizant Senior Resident  
28 Superior Court Judge or Chief District Court Judge of any court  
29 selected for this procedure, may terminate this procedure in any  
30 judicial district, county, or court upon a determination that its  
31 use has not accomplished objectives stated in subsection (a) of  
32 this section.

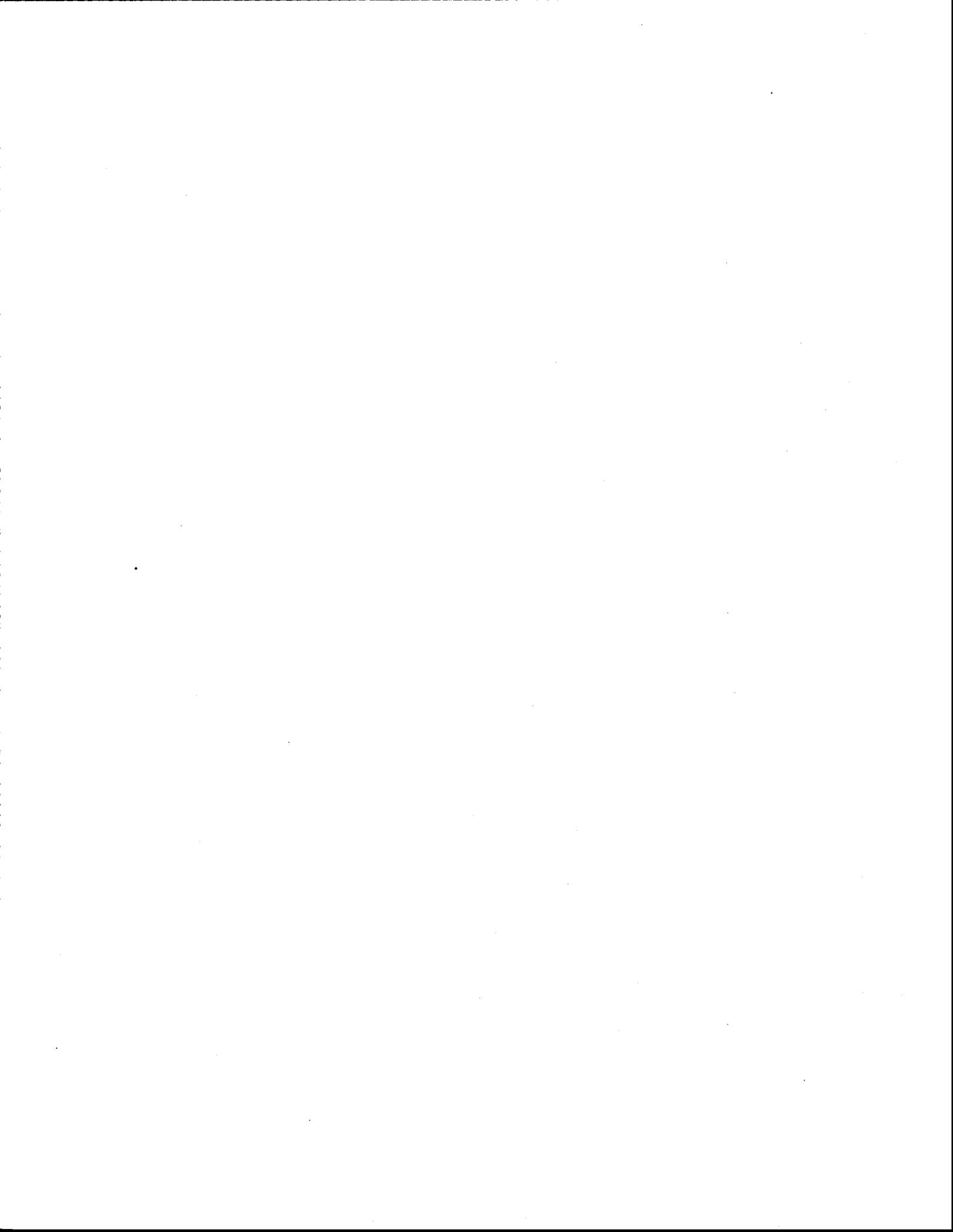
33 (e) Arbitrators in this procedure shall have the same immunity  
34 as judges from civil liability for their official conduct."

35 Section 4. This act becomes effective October 1, 1998,  
36 and applies to claims filed on or after that date.

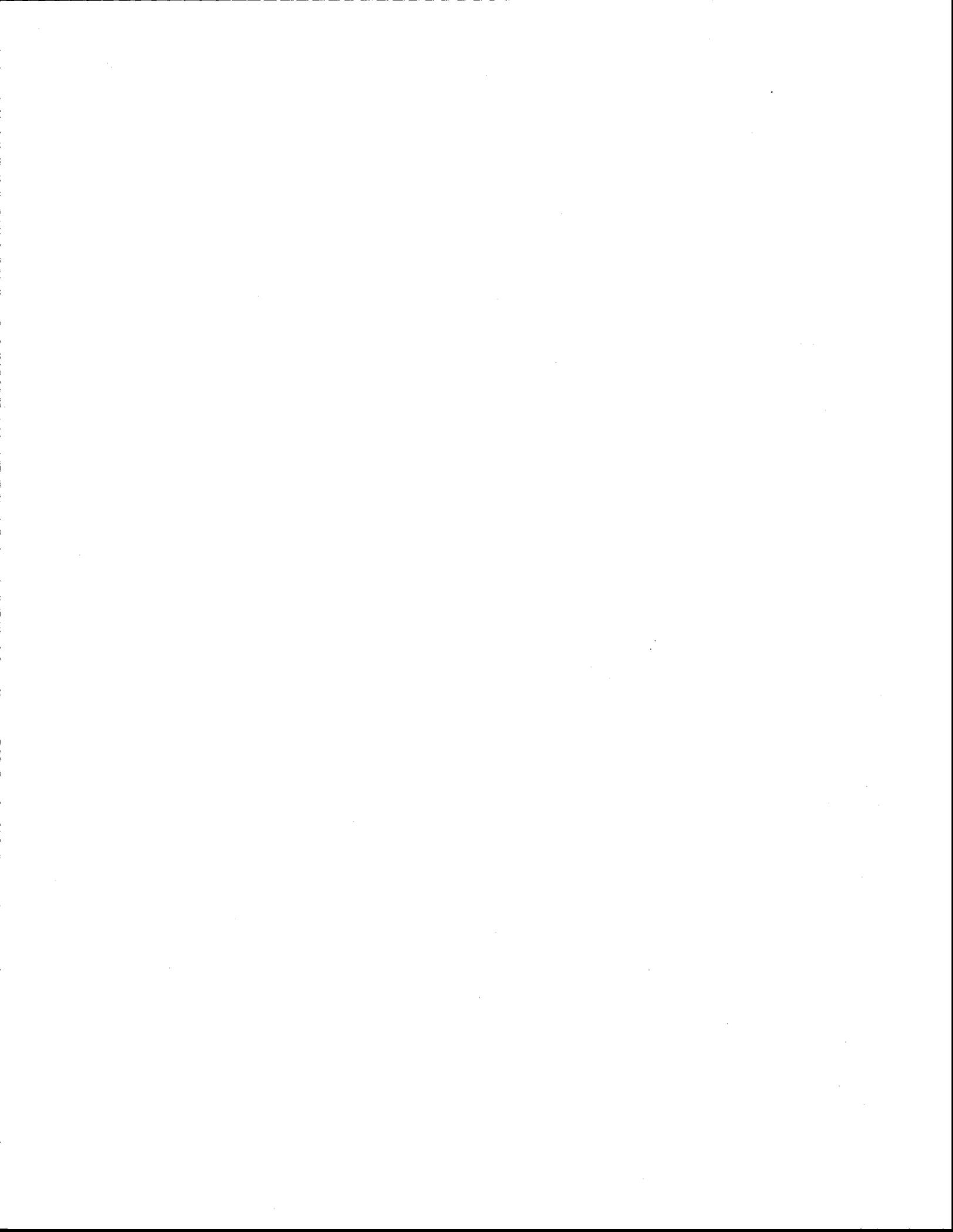
### **ANALYSIS OF PROPOSED LEGISLATION**

This legislation would increase the amount in controversy for civil cases heard in district court from \$10,000 to \$25,000. It would also amend G.S. 1A-1, Rule 8(a), which provides for a nonspecific demand for relief in negligence actions and in any claim for punitive damages, to increase from \$10,000 to \$25,000 the amount above which a specific demand cannot be made. The legislation would also authorize increases in the amount in controversy from \$15,000 to \$25,000 for civil cases that may be subject to court-ordered arbitration.

The legislation would be effective on October 1, 1998, and would apply to claims filed on or after that date.



**APPENDIX J**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

98-RGZ-009(4.23)  
THIS IS A DRAFT 13-MAY-98 11:20:18

Short Title: Eliminate Certified Notice.

(Public)

---

Sponsors:

---

Referred to:

---

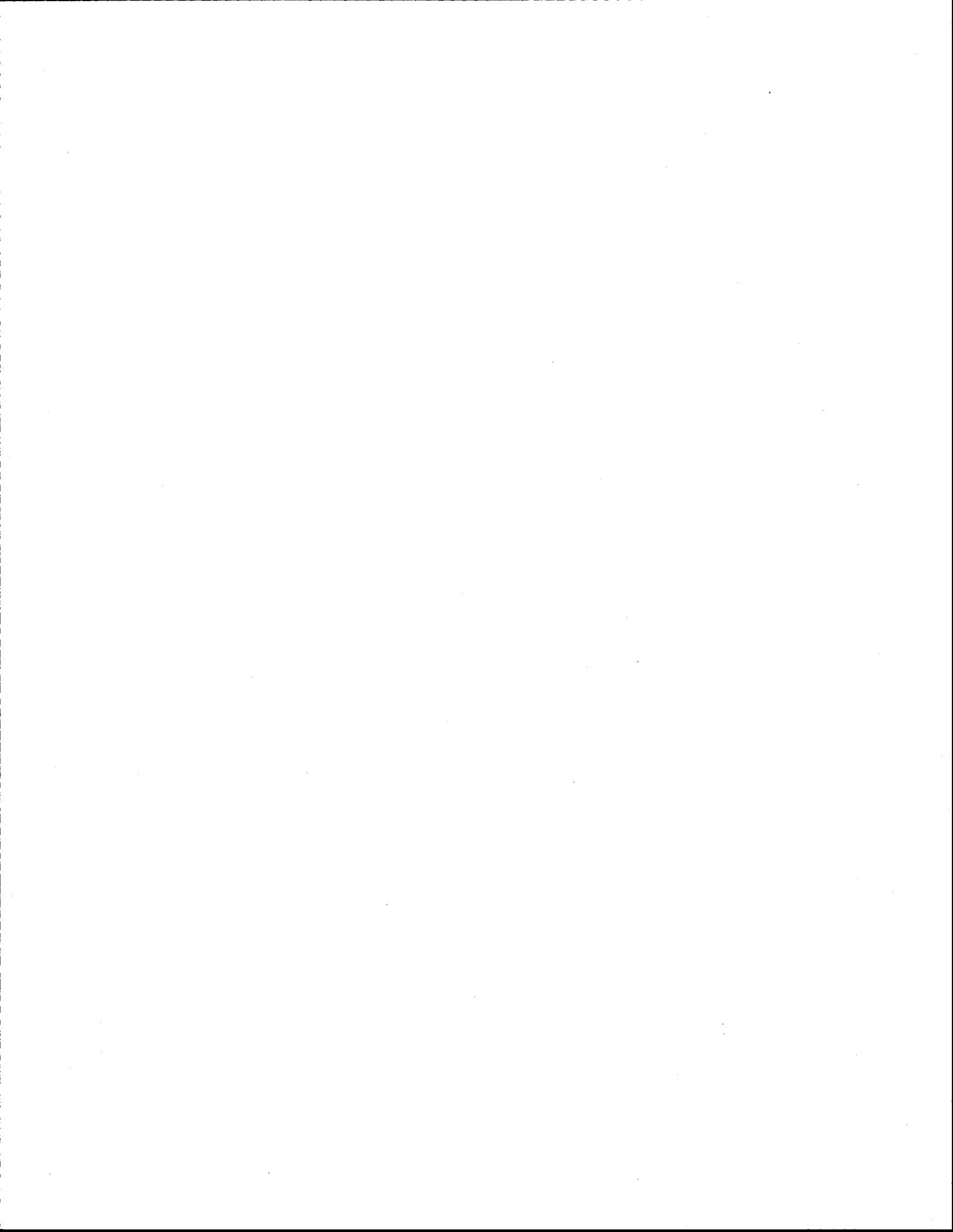
1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE IN  
3 BOND FORFEITURE CASES.  
4 The General Assembly of North Carolina enacts:  
5           Section 1. G.S. 15A-544(b) reads as rewritten:  
6       "(b) If the principal does not comply with the conditions of  
7 the bail bond, the court having jurisdiction must enter an order  
8 declaring the bail to be forfeited. If forfeiture is ordered by  
9 the court, a copy of the order of forfeiture and notice that  
10 judgment will be entered upon the order after 60 days must be  
11 served on each obligor. Service is to be made by the clerk  
12 mailing by ~~certified mail, return receipt requested,~~ first class  
13 mail a copy of the order of forfeiture and notice to each obligor  
14 at each obligor's address as noted on the bond and note on the  
15 original the date of mailing. Service is complete three days  
16 after the mailing."  
17           Sec. 2. This act is effective when it becomes law.

### **ANALYSIS OF PROPOSED LEGISLATION**

Under changes made the General Assembly during the 1995 Regular Session, an order of forfeiture of a bail bond must be served upon the defendant by certified mail, return receipt requested. Prior to the 1995 Session, service was attempted first by the sheriff, and if service was not obtained, the clerk mailed the order by regular mail. The legislature removed the requirement of attempted service by the sheriff and provided that service was to be made by certified mail.

The proposed legislation would delete the requirement of service by certified mail and allow service by first class mail. Service by certified mail often serves little purpose since the defendant has failed to appear in court and cannot be located.

**APPENDIX K**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

98-RGZ-010(4.23)

Short Title: Clerks of Court on Commissions.

(Public)

---

Sponsors:

---

Referred to:

---

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ADD CLERKS OF COURT TO THE SENTENCING AND POLICY  
3 ADVISORY COMMISSION, THE CRIMINAL JUSTICE ADVISORY BOARD, AND  
4 THE GOVERNOR'S CRIME COMMISSION.  
5 The General Assembly of North Carolina enacts:  
6       Section 1. G.S. 164-37 reads as rewritten:  
7 "§ 164-37. Membership; chairman; meetings; quorum.  
8 The Commission shall consist of ~~28~~ 29 members as follows:  
9       (1) The Chief Justice of the North Carolina Supreme  
10       Court shall appoint a sitting or former Justice or  
11       judge of the General Court of Justice, who shall  
12       serve as Chairman of the Commission;  
13       (2) The Chief Judge of the North Carolina Court of  
14       Appeals, or another judge on the Court of Appeals,  
15       serving as his designee;  
16       (3) The Secretary of Correction or his designee;  
17       (4) The Secretary of Crime Control and Public Safety or  
18       his designee;  
19       (5) The Chairman of the Parole Commission, or his  
20       designee;

- 1 (6) The President of the Conference of Superior Court  
2 Judges or his designee;
- 3 (7) The President of the District Court Judges  
4 Association or his designee;
- 5 (8) The President of the North Carolina Sheriff's  
6 Association or his designee;
- 7 (9) The President of the North Carolina Association of  
8 Chiefs of Police or his designee;
- 9 (10) One member of the public at large, who is not  
10 currently licensed to practice law in North  
11 Carolina, to be appointed by the Governor;
- 12 (11) One member to be appointed by the Lieutenant  
13 Governor;
- 14 (12) Three members of the House of Representatives, to  
15 be appointed by the Speaker of the House;
- 16 (13) Three members of the Senate, to be appointed by the  
17 President Pro Tempore of the Senate;
- 18 (14) The President Pro Tempore of the Senate shall  
19 appoint the representative of the North Carolina  
20 Community Sentencing Association that is  
21 recommended by the President of that organization;
- 22 (15) The Speaker of the House of Representatives shall  
23 appoint the member of the business community that  
24 is recommended by the President of the North  
25 Carolina Retail Merchants Association;
- 26 (16) The Chief Justice of the North Carolina Supreme  
27 Court shall appoint the criminal defense attorney  
28 that is recommended by the President of the North  
29 Carolina Academy of Trial Lawyers;
- 30 (17) The President of the Conference of District  
31 Attorneys or his designee;
- 32 (18) The Lieutenant Governor shall appoint the member of  
33 the North Carolina Victim Assistance Network that  
34 is recommended by the President of that  
35 organization;
- 36 (19) A rehabilitated former prison inmate, to be  
37 appointed by the Chairman of the Commission;
- 38 (20) The President of the North Carolina Association of  
39 County Commissioners or his designee;

- 1           (21) The Governor shall appoint the member of the  
2           academic community, with a background in criminal  
3           justice or corrections policy, that is recommended  
4           by the President of The University of North  
5           Carolina;
- 6           (22) The Attorney General, or a member of his staff, to  
7           be appointed by the Attorney General;
- 8           (23) The Governor shall appoint the member of the North  
9           Carolina Bar Association that is recommended by the  
10          President of that organization.
- 11          (24) A member of the Justice Fellowship Task Force, who  
12          is a resident of North Carolina, to be appointed by  
13          the Chairman of the Commission.
- 14          (25) The President of the Association of Clerks of  
15          Superior Court of North Carolina, or his designee.

16          The Commission shall have its initial meeting no later than  
17          September 1, 1990, at the call of the Chairman. The Commission  
18          shall meet a minimum of four regular meetings each year. The  
19          Commission may also hold special meetings at the call of the  
20          Chairman, or by any four members of the Commission, upon such  
21          notice and in such manner as may be fixed by the rules of the  
22          Commission. A majority of the members of the Commission shall  
23          constitute a quorum."

24                 Sec. 2. G.S. 143B-273.6 reads as rewritten:  
25    "**§ 143B-273.6. State Criminal Justice Partnership Advisory**  
26    **Board; members; terms; chairperson.**

27    (a) There is created the State Criminal Justice Partnership  
28    Advisory Board. The State Board shall act as an advisory body to  
29    the Secretary with regards to this Article. The State Board  
30    shall consist of ~~21~~ 22 members as follows:

- 31           (1) A member of the Senate.  
32           (2) A member of the House of Representatives.  
33           (3) A judge of the Superior Court.  
34           (4) A judge of the district court.  
35           (5) A district attorney.  
36           (6) A criminal defense attorney.  
37           (7) A county sheriff.  
38           (8) A chief of a city police department.

- 1           (9) Two county commissioners, one from a predominantly  
2           urban county and one from a predominantly rural  
3           county.  
4           (10) A representative of an existing community-based  
5           corrections program.  
6           (11) A member of the public who has been the victim of a  
7           crime.  
8           (12) A rehabilitated ex-offender.  
9           (13) A member of the business community.  
10          (14) Three members of the general public, one of whom is  
11          a person recovering from chemical dependency or who  
12          is a previous consumer of substance abuse treatment  
13          services.  
14          (15) A victim service provider.  
15          (16) A member selected from each of the following  
16          service areas: mental health, substance abuse, and  
17          employment and training.  
18          (17) A clerk of superior court.  
19   (b) The membership of the State Board shall be selected as  
20 follows:  
21          (1) The Governor shall appoint the following members:  
22          the county sheriff, the chief of a city police  
23          department, the member of the public who has been  
24          the victim of a crime, a rehabilitated ex-offender,  
25          the members selected from each of the service  
26          areas.  
27          (2) The Lieutenant Governor shall appoint the following  
28          members: the member of the business community, one  
29          member of the general public who is a person  
30          recovering from chemical dependency or who is a  
31          previous consumer of substance abuse treatment  
32          services, the victim service provider.  
33          (3) The Chief Justice of the North Carolina Supreme  
34          Court shall appoint the following members: the  
35          superior court judge, the district court judge, the  
36          district attorney, the clerk of superior court, the  
37          criminal defense attorney, the representative of an  
38          existing community-based corrections program.  
39          (4) The President Pro Tempore of the Senate shall  
40          appoint the following members: the member of the

1                   Senate, the county commissioner from a  
2                   predominantly urban county, one member of the  
3                   general public.

4           (5) The Speaker of the House shall appoint the  
5           following members: the member of the House of  
6           Representatives, the county commissioner from a  
7           predominantly rural county, one member of the  
8           general public.

9           In appointing the members of the State Board, the appointing  
10           authorities shall make every effort to ensure fair geographic  
11           representation of the State Board membership and that minority  
12           persons and women are fairly represented.

13          (c) The initial members shall serve staggered terms, one-third  
14          shall be appointed for a term of one year, one-third shall be  
15          appointed for a term of two years, and one-third shall be  
16          appointed for a term of three years. The members identified in  
17          subdivisions (1) through (7) of subsection (a) of this section  
18          shall be appointed initially for a term of one year. The members  
19          identified in subdivisions (8) through (13) in subsection (a) of  
20          this section shall be appointed initially for a term of two  
21          years. The members identified in subdivisions (14) through (16)  
22          of subsection (a) of this section shall each be appointed for a  
23          term of three years. The additional member identified in  
24          subdivision (17) in subsection (a) of this section shall be  
25          appointed initially for a term of three years.

26          At the end of their respective terms of office their successors  
27          shall be appointed for terms of three years. A vacancy occurring  
28          before the expiration of the term of office shall be filled in  
29          the same manner as original appointments for the remainder of the  
30          term. Members may be reappointed without limitation.

31          (d) Each appointing authority shall have the power to remove a  
32          member it appointed from the State Board for misfeasance,  
33          malfeasance, or nonfeasance.

34          (e) The members of the State Board shall, within 30 days after  
35          the last initial appointment is made, meet and elect one member  
36          as chairman and one member as vice-chairman.

37          (f) The State Board shall meet at least quarterly and may also  
38          hold special meetings at the call of the chairman. For purposes  
39          of transacting business, a majority of the membership shall  
40          constitute a quorum.

1 (g) Any member who has an interest in a governmental agency or  
2 unit or private nonprofit agency which is applying for a State-  
3 County Criminal Justice Partnership grant or which has received a  
4 grant and which is the subject of an inquiry or vote by a grant  
5 oversight committee, shall publicly disclose that interest on the  
6 record and shall take no part in discussion or have any vote in  
7 regard to any matter directly affecting that particular grant  
8 applicant or grantee. 'Interest' in a grant applicant or grantee  
9 shall mean a formal and direct connection to the entity,  
10 including, but not limited to, employment, partnership, serving  
11 as an elected official, board member, director, officer, or  
12 trustee, or being an immediate family member of someone who has  
13 such a connection to the grant applicant or grantee.

14 (h) The members of the State Board shall serve without  
15 compensation but shall be reimbursed for necessary travel and  
16 subsistence expenses."

17 Sec. 3. 143B-478 reads as rewritten:

18 § 143B-478. Governor's Crime Commission -- creation;  
19 composition; terms; meetings, etc.

20 (a) There is hereby created the Governor's Crime Commission of  
21 the Department of Crime Control and Public Safety. The  
22 Commission shall consist of 34 voting members and six nonvoting  
23 members. The composition of the Commission shall be as follows:

24 (1) The voting members shall be:

25 a. The Governor, the Chief Justice of the Supreme  
26 Court of North Carolina (or his alternate),  
27 the Attorney General, the Director of the  
28 Administrative Office of the Courts, the  
29 Secretary of the Department of Human  
30 Resources, the Secretary of the Department of  
31 Correction, and the Superintendent of Public  
32 Instruction;

33 b. A judge of superior court, a judge of district  
34 court specializing in juvenile matters, a  
35 chief district court judge, a clerk of  
36 superior court, and a district attorney;

37 c. A defense attorney, three sheriffs (one of  
38 whom shall be from a "high crime area"), three  
39 police executives (one of whom shall be from a  
40 "high crime area"), six citizens (two with

- 1 knowledge of juvenile delinquency and the  
2 public school system, two of whom shall be  
3 under the age of 21 at the time of their  
4 appointment, one representative of a "private  
5 juvenile delinquency program," and one in the  
6 discretion of the Governor), three county  
7 commissioners or county officials, and three  
8 mayors or municipal officials;
- 9 d. Two members of the North Carolina House of  
10 Representatives and two members of the North  
11 Carolina Senate.
- 12 (2) The nonvoting members shall be the Director of the  
13 State Bureau of Investigation, the Secretary of the  
14 Department of Crime Control and Public Safety, the  
15 Director of the Division of Youth Services of the  
16 Department of Human Resources, the Administrator  
17 for Juvenile Services of the Administrative Office  
18 of the Courts, the Director of the Division of  
19 Prisons and the Director of the Division of Adult  
20 Probation and Paroles.
- 21 (b) The membership of the Commission shall be selected as  
22 follows:
- 23 (1) The following members shall serve by virtue of  
24 their office: the Governor, the Chief Justice of  
25 the Supreme Court, the Attorney General, the  
26 Director of the Administrative Office of the  
27 Courts, the Secretary of the Department of Human  
28 Resources, the Secretary of the Department of  
29 Correction, the Director of the State Bureau of  
30 Investigation, the Secretary of the Department of  
31 Crime Control and Public Safety, the Director of  
32 the Division of Prisons, the Director of the  
33 Division of Adult Probation and Paroles, the  
34 Director of the Division of Youth Services, the  
35 Administrator for Juvenile Services of the  
36 Administrative Office of the Courts, and the  
37 Superintendent of Public Instruction. Should the  
38 Chief Justice of the Supreme Court choose not to  
39 serve, his alternate shall be selected by the  
40 Governor from a list submitted by the Chief Justice

- 1                   which list must contain no less than three nominees  
2                   from the membership of the Supreme Court.
- 3           (2)   The following members shall be appointed by the  
4           Governor: the district attorney, the defense  
5           attorney, the three sheriffs, the three police  
6           executives, the six citizens, the three county  
7           commissioners or county officials, the three mayors  
8           or municipal officials.
- 9           (3)   The following members shall be appointed by the  
10          Governor from a list submitted by the Chief Justice  
11          of the Supreme Court, which list shall contain no  
12          less than three nominees for each position and  
13          which list must be submitted within 30 days after  
14          the occurrence of any vacancy in the judicial  
15          membership: the judge of superior court, the clerk  
16          of superior court, the judge of district court  
17          specializing in juvenile matters, and the chief  
18          district court judge.
- 19          (4)   The two members of the House of Representatives  
20          provided by subdivision (a)(1)d. of this section  
21          shall be appointed by the Speaker of the House of  
22          Representatives and the two members of the Senate  
23          provided by subdivision (a)(1)d. of this section  
24          shall be appointed by the President Pro Tempore of  
25          the Senate. These members shall perform the  
26          advisory review of the State plan for the General  
27          Assembly as permitted by section 206 of the Crime  
28          Control Act of 1976 (Public Law 94-503).
- 29          (5)   The Governor may serve as chairman, designating a  
30          vice- chairman to serve at his pleasure, or he may  
31          designate a chairman and vice-chairman both of whom  
32          shall serve at his pleasure.
- 33   (c)   The initial members of the Commission shall be those  
34   appointed pursuant to subsection (b) above, which appointments  
35   shall be made by March 1, 1977. The terms of the present members  
36   of the Governor's Commission on Law and Order shall expire on  
37   February 28, 1977. Effective March 1, 1977, the Governor shall  
38   appoint members, other than those serving by virtue of their  
39   office, to serve staggered terms; seven shall be appointed for  
40   one-year terms, seven for two-year terms, and seven for

1 three-year terms. At the end of their respective terms of office  
2 their successors shall be appointed for terms of three years and  
3 until their successors are appointed and qualified. The  
4 Commission members from the House and Senate shall serve two-year  
5 terms effective March 1, of each odd-numbered year; and they  
6 shall not be disqualified from Commission membership because of  
7 failure to seek or attain reelection to the General Assembly, but  
8 resignation or removal from office as a member of the General  
9 Assembly shall constitute resignation or removal from the  
10 Commission. Any other Commission member no longer serving in the  
11 office from which he qualified for appointment shall be  
12 disqualified from membership on the Commission. Any appointment  
13 to fill a vacancy on the Commission created by the resignation,  
14 dismissal, death, disability, or disqualification of a member  
15 shall be for the balance of the unexpired term.

16 (d) The Governor shall have the power to remove any member  
17 from the Commission for misfeasance, malfeasance or nonfeasance.

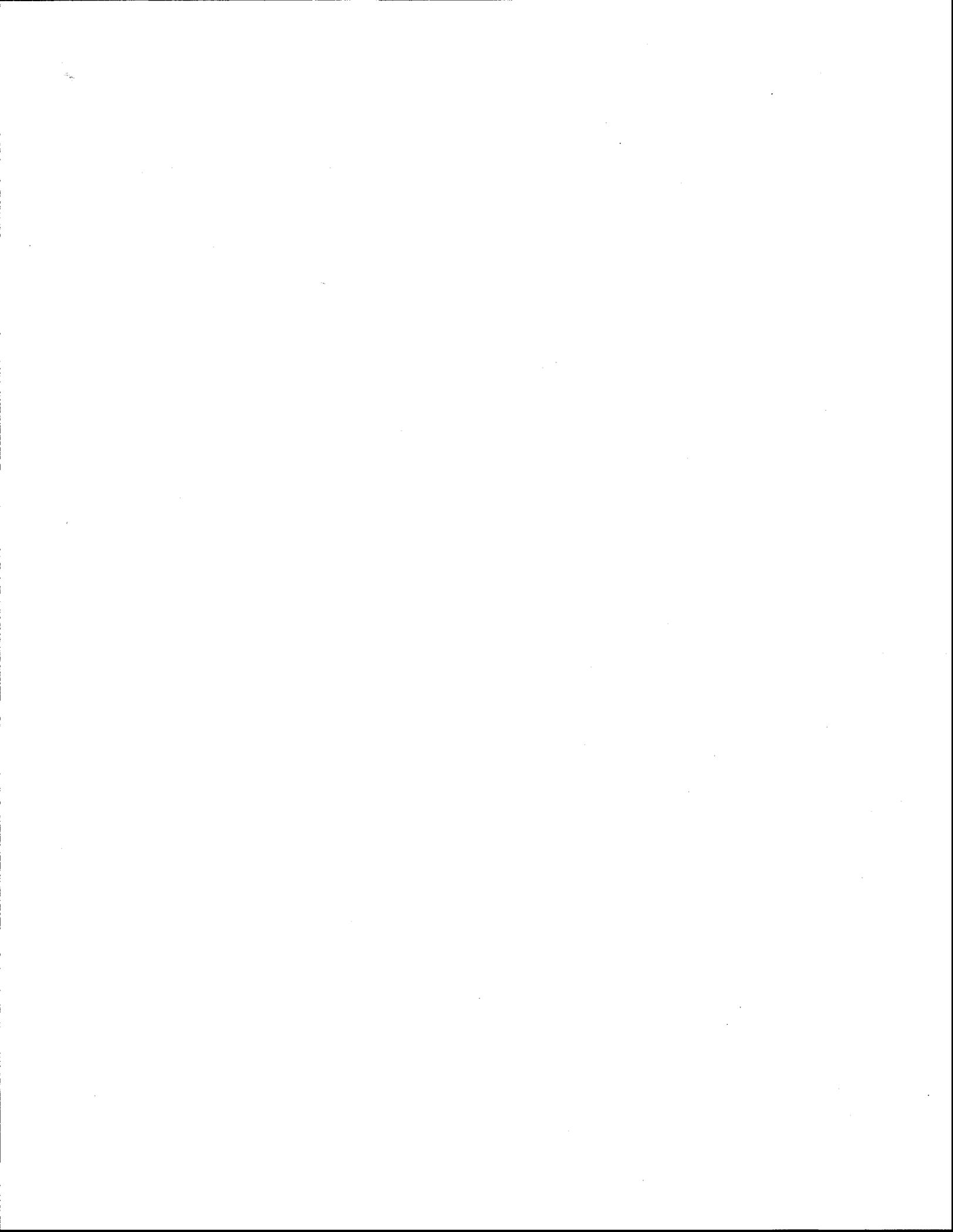
18 (e) The Commission shall meet quarterly and at other times at  
19 the call of the chairman or upon written request of at least  
20 eight of the members. A majority of the voting members shall  
21 constitute a quorum for the transaction of business.

22 Sec. 4. This act is effective when it becomes law.

### **ANALYSIS OF PROPOSED LEGISLATION**

The proposed legislation would amend the authorizing legislation for the Sentencing and Policy Advisory Commission, the Criminal Justice Advisory Board, and the Governor's Crime Commission to add to the membership of each Commission a representative of the clerks of court.

**APPENDIX L**





1 "§15A-813. Witness from another state summoned to testify in this  
2 State.

3 If a person in any state which by its laws has made provision  
4 for commanding persons within its borders to attend and testify  
5 in criminal prosecutions, or grand jury investigations commenced  
6 or about to commence in this State, is a material witness in a  
7 prosecution pending in a court of record in this State, or in a  
8 grand jury investigation which has commenced or is about to  
9 commence, a judge of such court may issue a certificate under the  
10 seal of the court, stating these facts and specifying the number  
11 of days the witness will be required. Said certificate may  
12 include a recommendation that the witness be taken into immediate  
13 custody and delivered to an officer of this State to assure his  
14 attendance in this State. This certificate shall be presented to  
15 a judge of a court of record in the county in which the witness  
16 is found.

17 If the witness is summoned to attend and testify in this State  
18 he shall be ~~tendered the sum of ten cents (10¢) a mile~~  
19 compensated at the rate currently authorized for State employees  
20 for each mile by the ordinary traveled route to and from the  
21 court where the prosecution is pending, and five dollars (\$5.00)  
22 for each day that he is required to travel and attend as a  
23 witness. A witness who has appeared in accordance with the  
24 provisions of the summons shall not be required to remain within  
25 this State a longer period of time than the period mentioned in  
26 the certificate unless otherwise ordered by the court. If such a  
27 witness is required to appear more than one day, he is also  
28 entitled to reimbursement for actual expenses incurred for  
29 lodging and meals, not to exceed the maximum currently authorized  
30 for State employees when traveling in the State. If such  
31 witness, after coming into this State, fails without good cause  
32 to attend and testify as directed in the summons, he shall be  
33 punished in the manner provided for the punishment of any witness  
34 who disobeys a summons issued from a court of record in this  
35 State."

36 Sec. 3. This act is effective when it becomes law, and  
37 applies to all out-of-state witness travel expenses incurred on  
38 or after that date.

### **ANALYSIS OF PROPOSED LEGISLATION**

The legislation amends G.S. 7A-314(c) to provide that out-of-state witnesses may be compensated for travel at the rate authorized for State employees. It also amends G.S. 15A-813 to make the same change and to provide that an out-of-state witness who is required to appear more than one day is entitled to reimbursement for actual expenditures incurred for lodging and meals, not to exceed the rate authorized for State employees.

The legislation is effective when it becomes law and applies to out-of-state witnesses travel expenses incurred on or after that date.